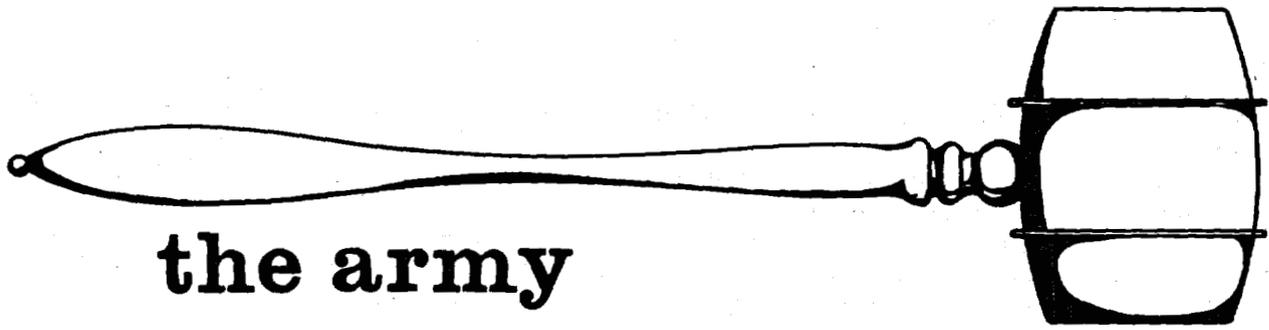


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Release of Information

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FOIA,¹ as the Freedom of Information Act is often called, is not a new statute. It was enacted in 1966 to amend section 3 of the Administrative Procedure Act (APA).² Because executive agencies had been permitted under the APA to consider the status and purpose of the requester in deciding whether to disclose information, FOIA was intended to guarantee public access to government information. Only public records falling within nine categories called "exemptions" could be withheld.³

¹5 U.S.C. § 552 (1976). The following discussion of FOIA is limited to substantive law. Procedural aspects often are unique to individual agencies, and procedures for Department of the Army are found in AR 340-17, Release of Information from Army Files (C2, 15 November 1979 and 103, 27 November 1980) [hereinafter cited as AR 340-17].

²The Administrative Procedure Act, ch. 324, § 3, 60 Stat. 238 (1946) (current version at 5 U.S.C. §§ 551-559, 701-706, 1305, 3105, 3344, 6362, 7562 (1976)).

³H.R. REP. NO. 1497, 89th Cong., 2d Sess., reprinted in [1966] U.S. CODE CONG. & AD. NEWS 2418.

Substantial amendments were enacted in 1974.⁴ These amendments were intended to correct deficiencies which had been identified during Congressional oversight hearings two years before.⁵ In effect, the amendments strengthened the public access provisions of FOIA by making it substantially more difficult for agencies to withhold information. For example, to insure federal agencies responded promptly to requests for information, time limits were imposed.⁶ Procedures to expedite litigation involving FOIA requests were adopted.⁷ Litigants were permitted to recover attorney fees and costs at the discretion of the

court.⁸ Federal courts were empowered to decide cases *de novo* and to conduct *in camera* inspections.⁹ The burden of proof to justify withholding was placed squarely on the defendant agency.¹⁰ Still other changes were included in the amendments to favor disclosure of government information.¹¹

The Act was amended again in 1976.¹² While the extent of the amendment was limited to Exemption 3, the effect was the same as before: withholding government documents became more difficult. Technical and conforming amendments were made in 1978 as part of the Civil Service Reform Act.¹³ With

⁴Pub. L. No. 93-502, 88 Stat. 1561 (1974).

⁵H.R. REP. NO. 93-876, 93d Cong., 2d Sess., *Reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 6267, 6270. NEWS 6267, 6270.

⁶After receipt of a proper request, agencies have ten working-days in which to decide, *inter alia*, whether to comply with the request. Administrative appeals must be resolved within twenty working-days. 5 U.S.C. § 552(a)(6)(A) (1976).

⁷Defendant federal agencies must file a responsive pleading within thirty days after service instead of the normal sixty-day period. 5 U.S.C. § 552(a)(4)(C) (1976). Expedited docketing procedures also were provided. 5 U.S.C. § 552(a)(4)(D) (1976).

⁸5 U.S.C. § 552(a)(4)(E) (1976).

⁹5 U.S.C. § 552(a)(4)(B) (1976).

¹⁰*Id.*

¹¹Agencies were required to develop uniform fee schedules permitting recovery of only the direct costs of search and duplication of records. 5 U.S.C. § 552(a)(4)(A) (1976). Agencies were required to submit annual reports to Congress detailing the handling of FOIA requests during the preceding calendar year. 5 U.S.C. § 552(d) (1976).

¹²Pub. L. No. 94-409, 90 Stat. 1241 (1976).

¹³Pub. L. No. 95-454, 91 Stat. 1111 (1978). The responsibility for conducting an administrative investiga-

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the advent of FOIA, Congress consistently has affirmed its intent that the Act "assure the availability of Government information necessary to an informed electorate."¹⁴

a. Methods of Access.

FOIA provides access to government information by members of the public in three ways: publication, indexing for public inspection, and access upon request.¹⁵ Certain information must be published in the Federal Register for the guidance of the public.¹⁶ Other information must be indexed by the agency and made available for public inspection and copying.¹⁷ In addition to these two affirmative obligations to make information available to the public, nonexempt agency records must be provided promptly to any person upon receipt of a request which reasonably describes such records and complies with published agency rules.¹⁸

(1) **Publication.** The publication requirement encompasses five categories of information: the organization of an agency, its methods of operation, forms, rules of general applicability, and amendments to these categories of information.¹⁹ Of these, the fourth

tion following a judicial finding of possible wrongful withholding of government documents was vested formerly with the Civil Service Commission. 5 U.S.C. § 552(a)(4)(F). This function was transferred to the Special Counsel, Merit Systems Protection Board.

¹⁴H.R. REP. NO. 1497, 89th Cong., 2d Sess., *reprinted in* [1966] U.S. CODE CONG. & AD. NEWS 2418, 2429.

¹⁵5 U.S.C. § 552(a) (1976).

¹⁶5 U.S.C. § 552(a)(1) (1976).

¹⁷5 U.S.C. § 552(a)(2) (1976).

¹⁸5 U.S.C. § 552(a)(3) (1976). Rules for the Dep't of Defense have been published in DoD Dir. 5400.7, DoD Freedom of Information Act Program (C3, 3 December 1980) [hereinafter cited as DoD Dir. 5400.7] and in DoD Reg. 5400.7-R, DoD Freedom of Information Act Program (3 November 1980) [hereinafter cited as DoD Reg. 5400.7-R].

¹⁹5 U.S.C. § 552(a)(1) (1976) requires the following five categories of information be published in the Federal Register:

category, substantive rules, statements of policy or interpretations of general applicability, is the most litigated but least defined.²⁰ What is certain is that those statements of policy and interpretations adopted by the agency which are not published in the Federal Register must be made available for public inspection and copying.²¹ While the line which separates publication from indexing may not be bright, it certainly is significant. Failure to publish information subject to the publication requirement may preclude agency action which is based upon the unpublished information.²² However, absence of an adverse effect²³ or actual and

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

These categories are repeated in almost identical language in ch. 2, AR 310-4, Publication in the Federal Register of Rules Affecting the Public (22 July 1977).

²⁰1 K. DAVIS, ADMINISTRATIVE LAW TREATISE, § 5.10, at 341 (2d ed. 1978).

²¹5 U.S.C. § 552(a)(2)(B) (1976).

²²5 U.S.C. § 552(a)(1) (1976).

²³*Id.* See, e.g., *Pesikoff v. Sec'y of Labor*, 501 F.2d 757 (D.C. Cir. 1973), *cert. denied*, 419 U.S. 1038 (1974); *Hogg v. United States*, 428 F.2d 274 (6th Cir. 1970).

timely notice of the information will cure the failure to publish.²⁴

Periodically some Army regulations are published in the Federal Register.²⁵ Even installation-level military regulations have been required to be published.²⁶ The publication requirement also has been held to apply to overseas command regulations.²⁷ An important standard used by the Administrative Law Division, OTJAG, to determine whether publication is required has been to identify the primary effect of the regulation. If the regulation primarily affects servicemembers or civilian employees, then publication has not been required.²⁸ The purpose of publication is "for the guidance of the public."²⁹ If servicemembers or civilian employees of an agency are not members of the "public," pub-

lication is not considered required when the primary effect of the material is internal.³⁰

(2) **Indexing.** The second method of public access to government information is the requirement that certain categories of information be indexed and made available for public inspection and copying.³¹ This requirement, like the publication requirement, is an affirmative obligation not dependent upon request. Litigation concerning this obligation has had an impact on the armed services. Decisions of Army Discharge Review Boards and Boards for Correction of Military Records are required to be indexed and made available to the public.³² Similarly, the Army is required to index and make available for public inspection and copying final dispositions of complaints under Article 138, UCMJ.³³ Sometimes the affirmative obligation to index and make certain information available for public inspection and copying is invoked by a requester to buttress a request for information. The requester might not request preparation of an index but would contend the agency

²⁴ 5 U.S.C. § 552(a)(1) (1976). *See, e.g.*, *Giles Lowery Stockyards v. Dep't of Agriculture*, 565 F.2d 321 (5th Cir. 1977); *Timber Access Indus., Inc. v. United States*, 553 F.2d 1250 (Ct. Cl. 1977).

²⁵ Recent examples include AR 600-15, Assistance of Creditor by the Department of the Army (15 November 1979), 44 Fed. Reg. 55,857 (1979); AR 210-10, Installations Administration (12 September 1977), 44 Fed. Reg. 7,948 (1979); and AR 601-210, Regular Army Enlistment Program (15 January 1975), 44 Fed. Reg. 9,745 (1979).

²⁶ U.S. Army Support Command, Hawaii Reg. 210-2, Entry Regulations for Certain Army Training Areas in Hawaii, 43 Fed. Reg. 46,971 (1978); Entry Regulations for Naval Installations in the State of Hawaii, 44 Fed. Reg. 76,279 (1979). *See United States v. Mowat*, 582 F.2d 1194 (9th Cir. 1978); *cf. United States v. Aarons*, 310 F.2d 341 (2d Cir. 1962).

²⁷ DAJA-AL 1977/5572, 11 Oct. 1977, and DAJA-AL 1977/3856, 16 Mar. 1977 (CINCUSAREUR regulations are subject to agency regulations implementing the publication requirement).

²⁸ For this reason, it was concluded that publication was not required for AR 27-14, Complaints Under Article 138, UCMJ (1 February 1979). DAJA-AL 1979/2286, 27 Mar. 1979. Regulatory guidance concerning the type of information subject to publication and the procedures governing such publication is found in AR 310-4, Publication in the Federal Register of Rules Affecting the Public (22 July 1977).

²⁹ 5 U.S.C. § 552(a)(1) (1976).

³⁰ *See Nat'l Treasury Employees Union v. Dep't of the Treasury*, 487 F. Supp. 1321 (D.D.C. 1980). The plaintiff union representing agency employees contended that an agency manual concerning collective bargaining was required to be made available for public inspection and copying. This argument was rejected by the court based on its distinction between agency personnel and the public at large.

³¹ 5 U.S.C. § 552(a)(2) (1976) requires the following three categories of information to be made available for public inspection and copying:

- (A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and
- (C) administrative staff manuals and instructions to staff that affect a member of the public.

³² *Urban Law Institute of Antioch College, Inc. v. Sec'y of Defense*, No. 76-530 (D.D.C., stipulation of dismissal approved Jan. 31, 1977).

³³ *Hodge v. Alexander*, No. 77-288 (D.D.C., order filed May 13, 1977).

must disclose the requested information because of its affirmative obligation. For example, in *Shermco Industries, Inc. v. Secretary of the Air Force*,³⁴ an unsuccessful bidder on a government contract requested disclosure of several documents in connection with a bid protest. The requester contended that the cost proposals of its competitor which had received the proposed award were required to be disclosed because the award amounted to a final opinion which was required to be disclosed.³⁵ While this argument was not persuasive, the case illustrates use of the affirmative disclosure obligations to support a request for information.

(3) Access Upon Request. The third method of public access to government information is by request reasonably describing such records and complying with published agency rules.³⁶ The adequacy of the description is largely an ephemeral limitation, for a description is sufficient if a professional agency employee familiar with the subject area of the request could locate the record with a reasonable amount of effort.³⁷ Agency rules pertaining to FOIA are important in determining whether requests are procedurally "proper" requests under FOIA.³⁸ The Department of Defense, for example, requires that a "proper" request be in writing, explicitly or implicitly invoke FOIA,³⁹ express a willingness to pay fees,⁴⁰ and be addressed to the

designated records custodian.⁴¹ Misdirected requests are to be forwarded promptly to the custodian designated with the responsibility for the records requested.⁴²

A request must request a "record". Although this term is not defined in FOIA, the Department of the Army has adopted the definition used in Title 44, § 3301, which includes, *inter alia*, books, papers, maps and photographs.⁴³ Several categories of information are not considered "records" by the Department of Defense. Physical objects,⁴⁴ personal notes,⁴⁵ data,⁴⁶ and commercially exploitable resources including formulae, designs, computer programs and technical data packages⁴⁷ are not treated as "records" subject to FOIA requests.

A "record" must be an "agency record." Not all government entities are subject to FOIA.⁴⁸ Physical possession by an agency of a record generated by an entity not subject to the Act does not, by itself, dictate "agency" status. Evidence of dominion and control appears to be the evolving standard.⁴⁹ While possession

processed as a FOIA request if direct search and reproduction fees would not exceed the automatic waiver threshold of thirty dollars.

⁴¹*Id.* §§ 5-100b and Appendix B.

⁴²*Id.* § 5-206.

⁴³AR 340-17, para. 1-2.

⁴⁴DoD Reg. 5400.7-R, § 1-402b(2).

⁴⁵*Id.* § 1-402b(5).

⁴⁶*Id.* § 1-402b(7). *Cf.* *Krohn v. Dep't of Justice*, 628 F.2d 195 (D.C. Cir. 1980) (a request for selective information is a request for data rather than "records" and therefore is not a FOIA request).

⁴⁷DoD Reg. 5400.7-R, § 1-402b(3). *Cf.* *SDC Dev. Corp. v. Mathews*, 542 F.2d 1116 (9th Cir. 1976) (computer tapes containing medical bibliographic data are not agency records).

⁴⁸The term "agency" is defined in 5 U.S.C. § 552(e) (1976). For the most part the Act applies to the executive branch but not to Congress or the Judiciary.

⁴⁹*Goland v. Central Intelligence Agency*, 607 F.2d 339 (D.C. Cir. 1978); *Ryan v. Dep't of Justice*, 617 F.2d 781 (D.C. Cir. 1980).

³⁴613 F.2d 1314 (5th Cir. 1980).

³⁵5 U.S.C. § 552(a)(2)(A) (1976).

³⁶5 U.S.C. § 552(a)(3) (1976). *See* note 16 *supra*.

³⁷H.R. REP. NO. 93-876, 93d Cong., 2d Sess., reprinted in [1974] U.S. CODE CONG. & AD. NEWS 6267, 6271. *See* *Marks v. United States*, 578 F.2d 261 (9th Cir. 1978).

³⁸Not only must the request reasonably describe the records sought, but the request also must comply with published agency rules "stating the time, place, fees (if any), and procedures to be followed . . ." 5 U.S.C. § 552(a)(3) (1976).

³⁹DoD Reg. 5400.7-R, § 1-401.

⁴⁰*Id.* § 1-509. If a request fails to express a willingness to pay fees, the request, if otherwise proper, must be

is only one of several factors which must be considered in making this determination, possession is essential to status as an "agency record." Agencies are not required to retrieve records formerly in their possession.⁵⁰ Similarly, agencies are not required by the Act to obtain⁵¹ or create⁵² records in order to satisfy a FOIA request. Agencies are required instead to release identifiable records which presently exist and are under the control of the agency.⁵³

Agencies also are required to disclose "reasonably segregable" nonexempt portions of otherwise exempt records.⁵⁴ Information is not reasonably segregable if an inordinate burden would result.⁵⁵ Segregating exempt from nonexempt information could be so extensive as to amount to creation of a record.⁵⁶ However "the mere deletion of names, addresses, and social security numbers . . ." would not amount to creation of a record.⁵⁷ Any editing must be sufficiently complete to prevent reconstruction of the deleted information.⁵⁸

⁵⁰Kissinger v. Reporters Comm. for Freedom of the Press, 445 U.S. 136 (1980).

⁵¹Forsham v. Harris, 445 U.S. 169 (1980).

⁵²Krohn v. Dep't of Justice, 628 F.2d 195 (D.C. Cir. 1980); DoD Reg. 5400.7-R, § 1-506.

⁵³Sometimes agencies are in possession of records which originated in other agencies subject to FOIA. Requests for such records should be referred to those agencies for a release determination and direct response to the requester. DoD Reg. 5400.7-R, § 1-508g.

⁵⁴5 U.S.C. § 552(b)(1976).

⁵⁵The amount of material, the degree of interspersion of exempt and nonexempt information, and the cost of editing are all considerations in determining the extent of the burden. See Lead Indus. Ass'n v. OSHA, 610 F.2d 70, 85 (2d Cir. 1979); Long v. IRS, 596 F.2d 362, 366-367 (9th Cir. 1979).

⁵⁶Substantial reprogramming or extensive manipulation of a computer data base in order to retrieve stored information may amount to creation of a record. DAJA-AL 1978/3159, 13 Jul. 1978.

⁵⁷Long v. IRS, 596 F.2d 362 (9th Cir. 1979).

⁵⁸See DoD Reg. 5400.7-R, § 5-203.

Proper requests for agency records can be denied only if two conditions are present.⁵⁹ First, the request must concern a record which falls within one or more of the nine statutory exemptions; second, a record exempt under other than Exemption 1, 3 or 6 must be made available upon request when no significant and legitimate government purpose would be served by withholding. Because the exemptions permit but do not require agencies to withhold requested records,⁶⁰ generally the presence of the second condition determines when exempt information will be withheld.⁶¹ Of the nine statutory exemptions, only the first seven have potential applicability to the military departments. These exemptions will be examined *seriatim*.

b. Exemptions.

(1) Exemption 1: Classified Records.

This exemption was amended in 1974 to limit the government's ability to withhold information. Two conditions must be present. The information must be classified under criteria established by an Executive Order, and the information must be "properly classified." Executive Order 12065⁶² establishes the criteria for classifying information in descending order as top secret, secret or confidential. Be-

⁵⁹*Id.* §§ 1-300 and 5-202.

⁶⁰Chrysler Corp. v. Brown, 441 U.S. 281 (1979). In the Department of the Army, the lowest level at which FOIA requests can be denied is at the Initial Denial Authority level. Field processing offices can recommend but cannot deny FOIA requests. However field processing offices do have the authority to release certain exempt information. AR 340-17, para. 2-1a.

⁶¹This limitation on the power to deny FOIA requests is consistent with the guidance of former Attorney General Griffin Bell. In a letter to the heads of all federal departments and agencies on May 5, 1977 (reprinted as DA Cir. 340-23 (6 July 1977)), Attorney General Bell stated that the Justice Department would defend FOIA suits only where disclosure of even exempt documents would be "demonstrably harmful."

⁶²3 C.F.R. 190 (1979), as implemented by AR 380-5, Department of the Army Information Security Program Regulation (15 August 1979).

cause the Act only requires that information be "classified," the minimum classification of confidential usually is the focal point in FOIA requests.⁶³ The designation FOUO (For Official Use Only) is not a level of classification.⁶⁴ To be considered FOUO, information must be otherwise exempt under FOIA.⁶⁵

The second condition requires that information be *properly* classified. This limitation was added by Congress to overrule the Supreme Court decision in *EPA v. Mink*.⁶⁶ In *Mink* the Court decided that judicial review of classified information was limited to determining whether requested information was classified, a finding which could be based on agency affidavit. Two amendments were made in 1974 to increase the authority of federal courts to conduct a full review of agency classification.⁶⁷ In addition to the power of deciding FOIA cases *de novo*, federal courts were empowered to examine agency records *in camera*.⁶⁸ While agency affidavits supporting claims of confidentiality still can be given substantial weight, the conduct of an *in camera* inspection rests in the sound discretion of the federal court.⁶⁹ The second amendment added the specific requirement that doc-

uments be *properly* classified. Courts can look behind the official notice of classification to determine whether procedural deficiencies occurred during the classification process.⁷⁰ Documents can be classified only by following the letter and spirit of the law.⁷¹

(2) Exemption 2: Internal Personnel Rules and Practices. The legislative history for this exemption reflects conflicting views by the House and Senate on the purpose of the exemption. The Senate's narrowed interpretation has been favored by most courts.⁷² Examples of internal personnel rules and practices of an agency used in the Senate report include "rules as to personnel's use of parking facilities or regulations of lunch hours, statements of policy as to sick leave, and the like."⁷³ The Supreme Court's opinion in *Department of the Air Force v. Rose*⁷⁴ limited the application of Exemption 2. Edited case summaries of honor and ethics hearings at a service academy could not be withheld under Exemption 2 because the exemption "is not applicable to matters subject to . . .

⁶³*Id.* The standards for classification are exceptionally grave damage to the national interest (top secret), serious damage to the national interest (secret), and a reasonable expectation of identifiable damage (confidential). Section 3-303 of the Executive Order permits consideration of the public interest in deciding whether information should be declassified. Agencies could be required to establish that the need for continued classification outweighs the public interest to be served by disclosure. See *Kanter v. Dep't of State*, 479 F. Supp. 921 (D.D.C. 1979).

⁶⁴See AR 340-16, Safeguarding "For Official Use Only" Information (7 August 1975).

⁶⁵*Id.* para. 3b.

⁶⁶410 U.S. 73 (1973).

⁶⁷H.R. REP. NO. 93-876, 93d Cong., 2d Sess., reprinted in [1974] U.S. CODE CONG. & AD. NEWS 6267, 6273.

⁶⁸5 U.S.C. § 552(a)(4)(B) (1976).

⁶⁹See *Ray v. Turner*, 587 F.2d 1187 (D.C. Cir. 1978).

⁷⁰For example, was the classification conducted by an authorized official? Have declassification procedures been followed?

⁷¹Release of information under FOIA can have an adverse impact on operations security. See AR 340-17, paras. 2-15 and 2-16. Documents can be classified subsequent to receipt of a FOIA request. *Halperin v. Dep't of State*, 565 F.2d 699 (D.C. Cir. 1977); DoD Reg. 5400.7-R, § 3-200, No. 1; AR 340-17, para. 2-15b. Documents also can be classified where a compilation of unclassified information might cause identifiable damage to national security. *Halperin v. Nat'l Security Council*, 457 F. Supp. 47 (D.D.C. 1978); AR 340-17, para. 2-15c.

⁷²*Dep't of the Air Force v. Rose*, 425 U.S. 352 (1976); *Jordan v. United States Dep't of Justice*, 591 F.2d 753 (D.C. Cir. 1978); *Caplan v. Bureau of Alcohol, Tobacco and Firearms*, 587 F.2d 544 (2d Cir. 1978).

⁷³S. REP. NO. 813, 89th Cong., 1st Sess. (1965), reprinted in SUBCOMM. ON ADM. PRAC. AND PROC. OF THE SENATE COMM. ON THE JUDICIARY, 93d Cong., 2d Sess., FREEDOM OF INFORMATION ACT SOURCEBOOK: LEGISLATIVE MATERIALS, CASES, ARTICLES (1974).

⁷⁴425 U.S. 352 (1976).

genuine and significant public interest."⁷⁵ Trivial matters of insignificant public interest have been held to include administrative markings such as file numbers, initials, signature and mail routing stamps.⁷⁶ Some courts have distinguished the interest of a particular requester from the public at large in deciding whether the requested information is of genuine and significant *public* interest.⁷⁷ Exemption 2 as a basis for withholding largely has been limited to routine matters of internal agency significance.

There is one area in which Exemption 2 may be susceptible to broadened interpretation. The problem of circumvention of agency regulation, practice or procedure resulting from disclosure of government information was recognized but not decided by the Supreme Court in its opinion in the *Rose* case.⁷⁸ Lower federal courts have disagreed whether Exemption 2 can permit withholding where disclosure could risk circumvention of agency regulation.⁷⁹ A broadened interpretation of Exemption 2 has been employed by the Department of Defense where disclosure "would substantially hinder the effective performance of a significant function of the Department of Defense"⁸⁰ Operating rules,

guidelines, manuals, procedures or schedules can be withheld in order to avoid prejudicing the effective performance of an agency function.⁸¹

(3) Exemption 3: Other Federal Withholding Statutes.

This exemption was intended to make FOIA consistent with federal statutes restricting public access to government information.⁸² In 1976 Exemption 3 was amended as part of the Government in the Sunshine Act⁸³ to legislatively overrule the decision of the Supreme Court in *Administrator, FAA v. Robertson*.⁸⁴ *Robertson* had held that the broad, discretionary withholding powers conferred on the Administrator, FAA, by the Federal Aviation Act⁸⁵ permitted withholding of information under Exemption 3. The subsequent amendment had the effect of limiting agency discretion. To qualify now as a withholding statute under Exemption 3, the federal statute must (1) require matters or particular types of matters be withheld, or (2) establish particular criteria to guide the exercise of agency discretion.⁸⁶ Statutes establishing the confidentiality of alcohol⁸⁷ and drug abuse⁸⁸ records of patients are considered to qualify as Exemption 3 withholding statutes by the Department of the Army.⁸⁹ The exemptions of the Privacy Act⁹⁰ have

⁷⁵*Id.* at 369.

⁷⁶*Maroscia v. Levi*, 569 F.2d 1000 (7th Cir. 1977) (per curiam); *Nix v. United States*, 572 F.2d 998 (4th Cir. 1978); *Malloy v. United States Dep't of Justice*, 457 F. Supp. 543 (D.D.C. 1978).

⁷⁷*Cox v. United States Dep't of Justice*, 601 F.2d 1 (D.C. Cir. 1979); *Bernknopf v. Califano*, 466 F. Supp. 319 (W.D. Pa. 1979).

⁷⁸425 U.S. at 364, 369.

⁷⁹*Compare Jordan v. United States Dep't of Justice*, 591 F.2d 753, 771 (D.C. Cir. 1978) (circumvention of agency rules is not a basis for broadening the scope of Exemption 2) with *Caplan v. Bureau of Alcohol, Tobacco & Firearms*, 587 F.2d 544, 546-547 (2d Cir. 1978) (Exemption 2 is not limited to matters in which there is no genuine and significant public interest where disclosure may risk circumvention of agency regulation).

⁸⁰DoD Reg. 5400.7-R, § 3-200, No. 2. *Accord*, Defense Acquisition Regulation, § 1-329.3(c)(2) (1 July 1976).

⁸¹*Id.*

⁸²H.R. REP. NO. 1497, 89th Cong., 2d Sess., reprinted in [1966] U.S. CODE CONG. & AD. NEWS 2418, 2427.

⁸³Pub. L. No. 94-409, § 5(b), 90 Stat. 1241 (1976).

⁸⁴422 U.S. 255 (1972).

⁸⁵Pub. L. No. 85-726, 72 Stat. 797 (1958) (current version at 49 U.S.C. § 1504 (Supp. III 1979)).

⁸⁶5 U.S.C. § 552(b)(3) (1976). See *Washington Post Co. v. United States Dep't of State*, 501 F. Supp. 1152 (D.D.C. 1980).

⁸⁷42 U.S.C. § 4582 (Supp. III 1979).

⁸⁸21 U.S.C. § 1175 (Supp. II 1979).

⁸⁹AR 340-17, para. 2-12c(3) (C2, 15 November 1979).

⁹⁰5 U.S.C. § 552a (Supp. III 1979).

been held to fall within Exemption 3 of FOIA.⁹¹ Whether the Copyright Act⁹² qualifies as a federal withholding statute for purposes of Exemption 3 is undecided.⁹³

(4) Exemption 4: Business Information.

Exemption 4 provides that the Act does not apply to "trade secrets and commercial or financial information obtained from a person and privileged or confidential."⁹⁴ Two types of business information are protected: (1) trade secrets and (2) information which is (a) commercial or financial, (b) obtained from a person and (c) privileged or confidential.⁹⁵ Few cases have been litigated concerning the exemption for trade secrets.⁹⁶ To determine whether the particular information can be considered a trade secret, several courts⁹⁷ have referred to the definition of a trade secret contained in the *Restatement of Torts*.⁹⁸ Because this definition is more restrictive than the meaning of confidential business information,⁹⁹ trade secrets may be entitled to absolute protection under Exemption 4.¹⁰⁰

The requirement that commercial or financial information be obtained from a person

⁹¹Painter v. FBI, 615 F.2d 689 (5th Cir. 1980); accord, Terkel v. Kelly, 599 F.2d 214 (7th Cir. 1979).

⁹²17 U.S.C. §§ 101-810 (Supp. III 1979).

⁹³See Weisberg v. United States Dep't of Justice, 631 F.2d 824 (D.C. Cir. 1980).

⁹⁴5 U.S.C. § 552(b)(4) (1976).

⁹⁵Getman v. NLRB, 450 F.2d 670, 673 (D.C. Cir. 1971). See generally 1 K. DAVIS, ADMINISTRATIVE LAW TREATISE, § 5:32 (2d ed. 1978).

⁹⁶U.S. Dep't of Justice, A Short Guide to the Freedom of Information Act (3d ed. 1980).

⁹⁷Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470 (1974); Union Oil Co. v. F.P.C., 542 F.2d 1036 (9th Cir. 1976); Martin Marietta Corp. v. F.T.C., 475 F. Supp. 338 (D.D.C. 1979).

⁹⁸4 Restatement of Torts § 757, comment on clause (b) (1939).

⁹⁹Martin Marietta Corp. v. F.T.C., 475 F. Supp. 338, 343 (D.D.C. 1979).

¹⁰⁰See Union Oil Co. v. F.P.C., 542 F.2d 1036, 1045 (9th Cir. 1976).

prevents information generated by the government from being protected by Exemption 4.¹⁰¹ Information submitted to the government by corporate and business entities qualifies as information obtained from a "person".¹⁰² Such information still must be privileged or confidential. Privileged information can encompass statements of legal services and expenses submitted to the government where such statements qualify as privileged attorney work product.¹⁰³

Most litigation involving Exemption 4 has concerned "confidential" business information.¹⁰⁴ The leading case construing the meaning of this term is *National Parks and Conservation Association v. Morton*.¹⁰⁵ In *National Parks*, financial information concerning national park concessioners was sought. After examining the legislative history, the court concluded that Exemption 4 was intended to protect the interests of both the government and the individual.¹⁰⁶ Whether certain information customarily would be released publicly would support but not decide the applicability of Exemption 4. To test whether disclosure would harm legitimate private or governmental interests, the court devised a two-prong test:

[C]ommercial or financial matter is "confidential" . . . if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause

¹⁰¹Soucie v. David, 448 F.2d 1067, 1079, n. 47 (D.C. Cir. 1971); Consumers Union v. Veterans Administration, 301 F. Supp. 796, 803 (S.D.N.Y. 1969). But see Brockway v. Dep't of the Air Force, 518 F.2d 1184 (8th Cir. 1975).

¹⁰²Stone v. Export-Import Bank of the United States, 552 F.2d 132 (5th Cir. 1977).

¹⁰³Indian Law Resource Center v. Dep't of the Interior, 477 F. Supp. 144 (D.D.C. 1979).

¹⁰⁴U.S. Dep't of Justice, A Short Guide to the Freedom of Information Act (3d ed. 1980).

¹⁰⁵498 F.2d 765 (D.C. Cir. 1974).

¹⁰⁶*Id.* at 770.

substantial harm to the competitive position of the person from whom the information was obtained.¹⁰⁷

This test was modified by the Office of Federal Procurement Policy (OFPP). In a letter to the heads of executive departments and establishments concerning requests for business information submitted by government contractors, the Administrator of OFPP suggested a uniform approach in applying the *National Parks* test:

[G]ive careful consideration to the facts that: (a) commercial and financial information submitted in connection with a procurement frequently is submitted more or less voluntarily and public disclosure against the wishes of the submitter may result in less complete information in future procurements, and (b) the context in which such commercial and financial information is submitted—that of the highly competitive area of Government procurement and free market enterprise—makes it more likely that release of the information would in many instances cause substantial competitive harm.¹⁰⁸

The Department of Defense has adopted the *National Parks* test but without reference to the interpretive guidance of OFPP.¹⁰⁹ While examples of qualifying records have been provided by the Department,¹¹⁰ presumably the

National Parks test is to be applied on a case-by-case basis.¹¹¹

The court in *National Parks* explained that where submitters are required to provide business information to the government, "there is presumably no danger that public disclosure will impair the ability of the Government to obtain this information in the future."¹¹² However, reluctance by prospective contractors to compete or provide candid and original bids could impair the government's ability to obtain information necessary to make informed decisions. Such a finding can be made where the government plausibly can support in some detail the chilling effect disclosure of business information would have on the willingness of prospective suppliers to provide information in the future.¹¹³ To satisfy the alternate *National Parks* test, likelihood of substantial, competitive injury, it is not necessary to show actual competitive harm. Actual competition and the likelihood of substantial, competitive injury is all that must be shown.¹¹⁴

In order to be withheld, records have to be exempt and withholding must serve some significant and legitimate government purpose.¹¹⁵ The exemptions permit but do not require information under government control be withheld.¹¹⁶ In the *Chrysler* case, the

¹⁰⁷*Id.*

¹⁰⁸Office of Federal Procurement Policy, Policy Letter No. 78-3 (Mar. 30, 1978), reprinted in DA Circular No. 340-25, Disclosure of Contractor-Supplied Information (15 June 1978) [hereinafter cited as OFPP Policy Letter No. 78-3].

¹⁰⁹DoD Reg. 5400.7-R, § 3-200, No. 4. "Records within the exemption must contain trade secrets, or commercial or financial records the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the government's ability to obtain necessary information in the future; or impair some other legitimate government interest."

¹¹⁰*Id.*

¹¹¹The OFPP policy letter stated that the facts in each case should be examined individually. OFPP Policy Letter No. 78-3. Generally non-governmental sources of information must be notified promptly of any request for information supplied by that source and afforded reasonable time to present any objections concerning release. DoD Reg. 5400.7-R, § 5-207.

¹¹²*Nat'l Parks and Conservation Ass'n v. Morton*, 498 F.2d at 770.

¹¹³*Orion Research, Inc. v. EPA*, 615 F.2d 551 (1st Cir. 1980).

¹¹⁴*Gulf & Western Indus., Inc. v. United States*, 615 F.2d 527 (D.C. Cir. 1979).

¹¹⁵DoD Reg. 5400.7-R, § 3-101.

¹¹⁶*Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979).

agency policy of voluntarily disclosing exempt information was at issue. The Court held that because FOIA is exclusively a disclosure statute, the exemptions are permissive and not mandatory. An agency decision to disclose information could not be reviewed judicially by a private right of action to enforce the Trade Secrets Act.¹¹⁷ Judicial review would be available under the Administrative Procedure Act. Judgment on the proper scope of review was reserved although the Court remarked that ordinarily *de novo* review would not be necessary.¹¹⁸

The government contended in *Chrysler* that regardless of the substantive scope of the Trade Secrets Act, its proposed disclosure was authorized by agency regulation and therefore was authorized by law. The Supreme Court held that in order for agency regulations to have the force and effect of law, three conditions had to be satisfied. First, the regulation had to be a substantive rule—one affecting individual rights and obligations—and not an interpretive rule or general statement of policy. Second, the regulation had to be properly promulgated. It had to comply with any statutory procedural requirements. Finally, in order for the regulation to have the force and effect of law, the regulation had to have a nexus with some congressional grant of legislative authority.¹¹⁹ The significance of the *Chrysler* decision depends on future litigation defining the

scope of the Trade Secrets Act.¹²⁰ Presently agency regulations can provide legal authorization for the release of business information protected by this criminal statute only if the three conditions identified by the Supreme Court are satisfied. To avoid this problem, the Department of Defense has determined that business information protected by Exemption 4 ordinarily will be withheld.¹²¹

(5) Exemption 5: Certain Agency Memoranda.

Exemption 5 exempts those documents normally privileged in the civil discovery context.¹²² Documents which would not routinely be disclosed through discovery to a private party in litigation with an agency are not available under FOIA. Exemption 5 does not incorporate every civil discovery privilege.¹²³ The Supreme Court has expressly recognized three privileges under this exemption: deliberative process, attorney-client and attorney work-product, and the trade secrets privilege.

The deliberative process privilege was intended to assure the full and frank exchange of opinions in making government decisions.¹²⁴ Because the privilege protects the quality of agency decision-making, only predecisional communications are privileged. Post-decisional communications which seek to justify or explain a decision already

¹¹⁷ 18 U.S.C. § 1905 (1976). This statute prohibits officers or employees of the United States from disclosing trade secrets and other types of business information except as authorized by law. Whether the Trade Secrets Act is an exempting statute within the meaning of Exemption 3, and whether Exemption 4 is coextensive with the Trade Secrets Act were undecided. 441 U.S. at 319, n. 49.

¹¹⁸ 441 U.S. at 318.

¹¹⁹ Subsequent litigation has identified 42 U.S.C. § 1306 as constituting a clear delegation of legislative authority to the agency head. *St. Mary's Hosp., Inc. v. Harris*, 604 F.2d 407 (5th Cir. 1979).

¹²⁰ The Justice Department does not believe the Trade Secrets Act is an Exemption 3 statute nor does it believe its scope is as broad as its literal language. U.S. Dep't Of Justice, Office Of Information Law And Policy, Memorandum (June 15, 1979).

¹²¹ DoD Reg. 5400.7-R, § 3-101. For an example of litigation concerning discretionary disclosure of business information, see *Burroughs Corp. v. Brown*, 501 F. Supp. 375 (E.D. Va. 1980).

¹²² *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975).

¹²³ *Fed. Open Market Comm. of the Fed. Reserve Sys. v. Merrill*, 443 U.S. 340, 354 (1979).

¹²⁴ H.R. REP. NO. 1497, 89th Cong., 2d Sess., reprinted in [1966] U.S. CODE CONG. & AD. NEWS 2418, 2427.

reached are not privileged.¹²⁵ Not all predecisional communications are privileged. Factual information segregable from deliberative memoranda is not privileged.¹²⁶ Deliberative memoranda expressly adopted or incorporated by the decision-maker are not protected by Exemption 5.¹²⁷ Finally, the deliberative process privilege does not apply to "final opinions" which are required to be indexed and made available for public inspection.¹²⁸ The privilege is not limited to records generated by the government. Memoranda used in the decision-making process which are prepared by outside consultants can be protected.¹²⁹

The attorney-client privilege was intended to foster a relationship of trust by assuring that communications between attorney and client would not be divulged. The privilege extends to the communications of the client as well as to the advice and opinions of the attorney.¹³⁰ Unlike the deliberative process privilege, the attorney-client privilege permits the withholding of factual information in order to protect confidential communica-

tions.¹³¹ In order to qualify for the privilege, the documents must stem from an attorney-client relationship in which there was an expectation of confidentiality. Failure to establish evidence of such an expectation in the event of litigation or breach of the expectation by disclosure to a third party will defeat the privilege.¹³²

The attorney work-product privilege does not encompass all agency documents prepared by an attorney. However, it clearly applies to "memoranda prepared by an attorney in contemplation of litigation which set forth the attorney's theory of the case and his litigation strategy."¹³³ It also applies to material which might disclose an attorney's appraisal of factual evidence.¹³⁴ Even material prepared by outside consultants relevant to litigation strategy has been withheld under the attorney-client privilege.¹³⁵

The third privilege recognized by the Supreme Court is one for confidential commercial information based on Federal Rule of Civil Procedure 26(c)(7). In *Federal Open Market Committee v. Merrill*,¹³⁶ a law student sought access to monthly instructions of the Committee concerning the purchase and sale of securities and foreign currencies on the open market. The Court determined that Exemption 5 incorporated a qualified privilege for confidential commercial information in order to protect the government in the marketplace.

¹²⁵ *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975).

¹²⁶ *EPA v. Mink*, 410 U.S. 73, 87-91 (1973). Factual information need not be disclosed if inextricably linked to the deliberative process. *Montrose Chem. Corp. v. Train*, 491 F.2d 63 (D.C. Cir. 1974).

¹²⁷ *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161 (1975). *Cf. Swisher v. Dep't of the Air Force*, 495 F. Supp. 337 (W.D. Mo. 1980) (allusion to predecisional report was not an express adoption or incorporation).

¹²⁸ 5 U.S.C. § 552(a)(2) (1976). *NLRB v. Sears, Roebuck & Co.*, 421 U.S. at 153-154. Opinions retained and referred to as precedent, even though not "final opinions," are not exempt under the deliberative process privilege. *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 869 (D.C. Cir. 1980).

¹²⁹ *Wu v. Nat'l Endowment for the Humanities*, 460 F.2d 1030 (5th Cir. 1972), *cert. denied*, 410 U.S. 926 (1973).

¹³⁰ *Meade Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242, 254 n. 25 (D.C. Cir. 1977).

¹³¹ *Id.* n. 28.

¹³² *Id.* at 253-255. *Cf. Shermco Indus., Inc. v. Sec'y of the Air Force*, 613 F.2d 1314, 1318-1321 (5th Cir. 1980) (disclosure of an intra-agency communication to another federal agency, such as the filing of a federal agency's legal opinion with GAO in defense of a bid protest, does not necessarily waive Exemption 5).

¹³³ *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 154 (1975).

¹³⁴ *Mervin v. F.T.C.*, 591 F.2d 821 (D.C. Cir. 1978).

¹³⁵ *Exxon Corp. v. F.T.C.*, 476 F. Supp. 713 (D.D.C. 1979).

¹³⁶ 443 U.S. 340 (1979).

Confidential commercial information generated by the government enjoys a qualified privilege. Once the government's commercial interests no longer are threatened, the privilege expires unless extended by another privilege or exemption. For example, predecisional communications remain privileged even after a decision is made because disclosure at any time could inhibit the free flow of advice. Contrastingly, the trade secrets privilege of Exemption 5 is limited because the need to protect confidential, commercial information generated by the government is finite. Once the competitive disadvantage expires, so does the privilege.¹³⁷

Other privileges have been recognized by lower federal courts as part of Exemption 5. Statements by witnesses to military aircraft accident safety investigators upon assurances of confidentiality have been withheld based on the necessity of acquiring factual and deliberative information to improve safety.¹³⁸ One court even has permitted confidential witness statements contained in an Inspector General report to be withheld.¹³⁹ Courts also

have permitted appraisal reports being used in government negotiations to be withheld.¹⁴⁰ Exemption 5 does not incorporate all civil discovery privileges, and incorporation of such privileges is viewed with caution by the Supreme Court.¹⁴¹

(6) Exemption 6: Personnel, Medical and Similar Files.

Exemption 6 was intended to preserve the public's right to obtain government information yet protect against clearly unwarranted invasions of personal privacy.¹⁴² The balancing test of clearly unwarranted invasion applies equally to personnel, medical and similar files.¹⁴³ Personal and not corporate or business privacy is protected.¹⁴⁴

Cases construing the term "similar files" are in disarray. Traditionally the phrase has not been viewed as a substantive limitation on the type of information subject to Exemption 6.¹⁴⁵ The Justice Department has con-

The Classified and Official Information Privileges Under the Military Rules of Evidence, The Army Lawyer, Mar. 1981 at 20-21 (authority to invoke the privilege may be too broad).

¹³⁷*Id.* at 359-360.

¹³⁸*Machin v. Zuckert*, 316 F.2d 336, cert. denied, 375 U.S. 896 (1963); *Brockway v. Dep't of the Air Force*, 518 F.2d 1184 (8th Cir. 1975); DoD Reg. 5400.7-R, § 3-200, No. 5a(7). See also *Fed. Open Market Comm. of the Fed. Reserve Sys. v. Merrill*, 443 U.S. 340, 355 n. 17 (1979). See generally *Jones and Findler, The Freedom of Information Act in Military Aircraft Cases*, 43 J. Air L. and Com. 535 (1977); *Levy, Litigating Military Aviation Accidents*, 25 Prac. Law. 55 (1979). Reports of safety investigations in which promises of confidentiality are not authorized may no longer automatically be withheld. DAJA-AL 1977/5464 (29 Sep. 1977), as digested in *The Army Lawyer*, Feb. 1978, at 6.

¹³⁹*Am. Fed'n of Gov't Employees v. Dep't of the Army*, No. 77-0062 (D.D.C. Dec. 5, 1977). A privilege for investigations of the Inspectors General can be claimed before courts-martial. *Manual for Courts-Martial, United States*, 1969 (Rev. ed.), Rule 506 (ch. 4). This privilege, insofar as it protects factual information, may be ephemeral because the privilege cannot be asserted where disclosure would be required by an act of Congress such as FOIA. *Id.*, Rule 506(a); cf. *Eisenberg, Graymail and Grayhairs*:

¹⁴⁰*Hoover v. United States Dep't of the Interior*, 611 F.2d 1132 (5th Cir. 1980); *Martin Marietta Aluminum, Inc. v. Adm'r, G.S.A.*, 444 F. Supp. 945 (C.D. Cal. 1977) (equity jurisdiction exercised in weighing effects of disclosure and nondisclosure).

¹⁴¹*Fed. Open Market Comm. of the Fed. Reserve Sys. v. Merrill*, 443 U.S. 340, 355 (1979).

¹⁴²H.R. REP. NO. 1497, 89th Cong., 2d Sess., reprinted in [1966] U.S. CODE CONG. & AD. NEWS 2418, 2428.

¹⁴³*Dep't of the Air Force v. Rose*, 425 U.S. 352, 370-376 (1976).

¹⁴⁴*Robertson v. Dep't of Defense*, 402 F. Supp. 1342, 1348-1349 (D.D.C. 1975). Personal financial information can be protected, *Deering Milliken, Inc. v. Irving*, 548 F.2d 1131 (4th Cir. 1977), and business information can be protected when the personal and business financial information are the same. *Nat'l Parks and Conservation Assoc. v. Kleppe*, 547 F.2d 673, 687-88 (D.C. Cir. 1976).

¹⁴⁵*Wine Hobby USA, Inc. v. United States Internal Revenue Serv.*, 502 F.2d 133, 135 (3d Cir. 1974); *Pacific Molasses Co. v. NLRB*, 577 F.2d 1172 (5th Cir. 1978).

tended "that any recorded information of a personal nature which can be identified to a particular individual, even though not in a 'personal file' or a 'medical file,' is within Exemption 6's threshold requirement of being a 'similar file.'" ¹⁴⁶ This interpretation has not been followed in several recent cases. In *Board of Trade v. Commodity Futures Trading Commission*, ¹⁴⁷ it was held that the material must be similar in nature to personal or confidential information found in personnel or medical records. The identities of individuals who were trade sources therefore could be disclosed because "[t]his interest in nondisclosure . . . [was] not in continued privacy of personal matters, but in anonymity of criticism on purely commercial matters."¹⁴⁸

In *Simpson v. Vance*, ¹⁴⁹ copies of the Biographic Register of senior and mid-level employees of the Department of State were sought. Some of the information related to the private lives of the employees.¹⁵⁰ Nevertheless the court concluded that with the exception of information concerning marital status, the privacy interest in the Register was not of the "magnitude" warranting protection as that found in personnel and medical files. Because the information was not found in a "similar" file, the court found it unnecessary to consider the potential use of such information by terrorists. Whether the term "similar files" will be regarded as a threshold requirement by other courts must await future litigation.

Exemption 6 protects against only "clearly unwarranted" invasions of personal privacy.

¹⁴⁶ U.S. Dep't Of Justice, Office Of Information Law And Policy, 2 FOIA Update No. 2 at 3 (1981).

¹⁴⁷ 627 F.2d 392 (D.C. Cir. 1980).

¹⁴⁸ *Id.* at 400.

¹⁴⁹ No. 79-1889 (D.C. Cir. Sep. 25, 1980).

¹⁵⁰ Individual entries included the employee's name, date of birth, marital status, educational background, work experience in private and government sectors, assignments, awards, promotions, language skills and name of spouse. *Id.* n. 3.

Determination of whether a particular disclosure would result in such an invasion involves balancing the individual's privacy interest in nondisclosure against the public interest in disclosure.¹⁵¹ Different factors must be considered in assessing an individual's privacy interest in nondisclosure. Embarrassment to the individual,¹⁵² risk of harassment or injury,¹⁵³ the expectation of privacy,¹⁵⁴ the context of the information,¹⁵⁵ and the availability of the information elsewhere¹⁵⁶ are some of the factors courts have considered. In determining the public interest to be served by disclosure, courts have considered the interest of the public at large and the interest of the particular requestor.¹⁵⁷ These

¹⁵¹ *Dep't of the Air Force v. Rose*, 425 U.S. 352, 372 (1976).

¹⁵² *Harbolt v. Dep't of State*, 616 F.2d 772 (5th Cir. 1980); *Cong. News Syndicate v. United States Dep't of Justice*, 438 F. Supp. 538, 544-545 (D.D.C. 1977).

¹⁵³ *Ferguson v. Kelly*, 455 F. Supp. 324 (N.D. Ill. 1978).

¹⁵⁴ *Robles v. EPA*, 484 F.2d 843 (4th Cir. 1973); *Columbia Packing Co., Inc. v. United States Dep't of Agriculture*, 417 F. Supp. 651 (D. Mass. 1976); *DAJA-AL 1978/4098*, 28 Dec. 1978 (organization telephone directory containing home addresses and telephone numbers unable to be withheld where it already was in public domain).

¹⁵⁵ Disclosure of names of personnel belonging to a particular religious preference may be a clearly unwarranted invasion of privacy. *DAJA-AL 1977/3913*, 22 Mar. 1977, as digested in *The Army Lawyer*, Sep. 1977; *cf. Parks v. United States Internal Revenue Serv.*, 618 F.2d 677 (10th Cir. 1980) (allegation of blacklisting employees not participating in savings bond drive states cause of action under Privacy Act).

¹⁵⁶ *Getman v. NLRB*, 450 F.2d 670, 674-76 (D.C. Cir. 1976); *Church of Scientology of Cal. v. United States Dep't of the Army*, 611 F.2d 738, 746-47 (9th Cir. 1980).

¹⁵⁷ *Church of Scientology of Cal. v. United States Dep't of the Army*, 611 F.2d 738, 747 (9th Cir. 1980); *Wine Hobby USA, Inc. v. United States Internal Revenue Serv.*, 502 F.2d 133 (3d Cir. 1974); *Disabled Officer's Ass'n v. Rumsfeld*, 428 F. Supp. 454 (D.D.C. 1977). The Department of Defense requires consideration be given to "the stated or ascertained purpose of the request." DoD Reg. 5400.7-R, § 3-200, No. 6b.

competing interests must be balanced to determine whether disclosure would cause a clearly unwarranted invasion of personal privacy.¹⁵⁸

Within the Department of Army, some personal information normally is releasable. This information is more extensive for military¹⁵⁹ than for civilian personnel.¹⁶⁰ Opinions of The Judge Advocate General are helpful in assessing the public interest to be served by disclosure.¹⁶¹ For information concerning disciplinary actions,¹⁶² personal privacy is protected by limiting what information normally is releasable.

If release of information would result in a clearly unwarranted invasion of personal privacy, FOIA does not require disclosure. Such information cannot be disclosed at the discre-

tion of an agency if the same information also is subject to the Privacy Act.¹⁶³ While theoretically an agency could make a discretionary disclosure of information protected by Exemption 6 of FOIA but which was not subject to the Privacy Act, this discretion appears to have been removed by the Department of Defense.¹⁶⁴ The inquiry must focus on whether the exemption applies, not on whether a significant and legitimate purpose would be served by withholding.

(7) Exemption 7: Investigatory Records Compiled for Law Enforcement Purposes.

Exemption 7 was amended substantially in 1974. One of the amendments substituted the term "records" for "files." The amendment requires consideration of particular records contained within investigatory files.¹⁶⁵ To qualify for withholding, the record must be an investigatory record conducted for a law enforcement purpose. A lack of authority to conduct an investigation would rebut any claimed law enforcement purpose.¹⁶⁶ "Law enforcement" includes civil, criminal and regulatory proceedings which detect, punish

¹⁵⁸ Balancing may be unnecessary if disclosure will not cause a clearly unwarranted invasion of personal privacy. See *Robles v. EPA*, 484 F.2d 843 (4th Cir. 1973).

¹⁵⁹ Personal information normally releasable for military servicemembers includes name, rank, grade, date of rank, date of birth, salary, duty assignments, unit address and telephone number, source of commission, military and civilian education and promotion sequence number. AR 340-21, The Army Privacy Program, para. 3-2b (C2, 15 June 1979). In addition the Defense Privacy Board has opined that a servicemember's marital status and the names, sexes, ages and number of dependents normally are releasable without an unwarranted invasion of privacy. HQDA Letter 340-76-3, 4 May 1976.

¹⁶⁰ For civilian personnel, the name, grade, salary, duty assignment and office address normally are releasable. Federal Personnel Manual, § 7, ch. 294.

¹⁶¹ The public interest in assisting creditors, DAJA-AL 1977/5197, 25 Aug. 1977, as digested in *The Army Lawyer*, Dec. 1977; DAJA-AL 1976/4062, 5 Apr. 1976, as digested in *The Army Lawyer*, Feb. 1977, or prospective litigants, DAJA-AL 1978/2604, 30 May 1978, as digested in *The Army Lawyer*, Dec. 1978 did not outweigh the invasion of personal privacy in releasing a home address. However the public interest in providing dependent support did outweigh the personal privacy interest. DAJA-AL 1976/4008, 26 Mar. 1976, as digested in 76-9 JALS (1976).

¹⁶² AR 340-19, Release of Information Pertaining to Disciplinary Actions (31 July 1975).

¹⁶³ *Florida Medical Ass'n v. Dep't of Health, Education and Welfare*, 479 F. Supp. 1291, 1305-1306 (M.D. Fla. 1979).

¹⁶⁴ DoD Reg. 5400.7-R, 3-101, provides in relevant part:

An exempted record, other than those being withheld pursuant to Exemptions 1, 3, or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DoD Component or higher authority, no significant and legitimate government purpose would be served by withholding it under an applicable exemption.

The significant and legitimate government purpose test does not apply to information protected under Exemption 6.

¹⁶⁵ U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S MEMORANDUM ON THE 1974 AMENDMENTS TO THE FREEDOM OF INFORMATION ACT (February 1975) at 5-6 [hereinafter cited as 1974 ATTORNEY GENERAL'S MEMORANDUM].

¹⁶⁶ *Weissman v. CIA*, 565 F.2d 692 (D.C. Cir. 1977).

or prevent law violations.¹⁶⁷ The extent to which an agency must demonstrate its law enforcement purpose in compiling the record depends on the nature of the agency and the nature of the record involved.¹⁶⁸

The 1974 amendments further limited the scope of Exemption 7. Investigatory records compiled for law enforcement purposes can be withheld provided one or more of six enumerated harms would occur. Exemption 7(A) permits withholding provided disclosure of investigatory records compiled for law enforcement purposes would "interfere with enforcement proceedings." In *NLRB v. Robbins Tire & Rubber Company*,¹⁶⁹ the Supreme Court held that a specific factual showing of interference with an unfair labor practice hearing was not required in order to withhold prehearing witness statements. Exemption 7(A) permits generic determinations of likely interference with enforcement proceedings.¹⁷⁰

Exemption 7(B) permits withholding provided disclosure would "deprive a person of a right to a fair trial or an impartial adjudication." Few cases have addressed this provision, but within Department of Army, clear guidance is provided by regulation.¹⁷¹ Corporations and other organizations are protected under this clause as well as individuals.¹⁷²

Exemption 7(C) conditions withholding on whether disclosure would "constitute an

¹⁶⁷1974 ATTORNEY GENERAL'S MEMORANDUM at 6; *Moorefield v. United States Secret Serv.*, 611 F.2d 1021 (5th Cir. 1980).

¹⁶⁸*Irons v. Bell*, 596 F.2d 468 (1st Cir. 1979); *Church of Scientology of Cal. v. United States Dep't of the Army*, 611 F.2d 738, 748-49 (9th Cir. 1980).

¹⁶⁹437 U.S. 214 (1978).

¹⁷⁰The Army has restricted disclosure of documents which may be required for civil rights actions by the Departments of Justice or Housing and Urban Development. AR 600-18, Equal Opportunity in Off-Post Housing, para. 2-17 (1 January 1979).

¹⁷¹AR 340-19, Release of Information Pertaining to Disciplinary Actions (31 July 1975).

¹⁷²1974 ATTORNEY GENERAL'S MEMORANDUM at 8.

unwarranted invasion of personal privacy." Only the privacy interests of individuals are protected by this clause.¹⁷³ The threshold which the government must meet in order to withhold information under Exemption 7(C) is less than that for Exemption 6.¹⁷⁴ The invasion of personal privacy only need be unwarranted. This difference in scope of the two exemptions reflects the greater potential for rumor and innuendo by associating a person with a law enforcement investigation.¹⁷⁵ Whether an invasion of personal privacy would be unwarranted is determined in the same manner as for Exemption 6.¹⁷⁶

Exemption 7(D) protects two types of investigatory records. The identity of a "confidential source" can be withheld as can "confidential information furnished only by the confidential source . . ." ¹⁷⁷ The identity of confidential sources can be withheld under express or implied promises of confidentiality.¹⁷⁸ Information supplied by confidential sources can continue to be withheld, even though similar information has been supplied by non-confidential sources, if disclosure would substantially risk revealing the identity of the confidential source.¹⁷⁹ Courts have

¹⁷³*Id.* at 9.

¹⁷⁴*Dep't of the Air Force v. Rose*, 425 U.S. 352, 378 n. 16 (1976); *Fund for Constitutional Gov't v. Nat'l Archives and Records Serv.*, 485 F. Supp. 1,5 (D.D.C. 1978).

¹⁷⁵*Congressional News Syndicate v. United States Dep't of Justice*, 438 F. Supp. 538, 541 (D.D.C. 1977).

¹⁷⁶*Id.* at 542; *Fund for Constitutional Gov't v. Nat'l Archives and Records Serv.*, 485 F. Supp. at 5-7.

¹⁷⁷The clause permits withholding of investigatory records which would "disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source." 5 U.S.C. § 552 (b)(7)(D) (1976).

¹⁷⁸*Nix v. United States*, 572 F.2d 998 (4th Cir. 1978).

¹⁷⁹*Id.* at 1004-1005.

disagreed whether a local law enforcement agency which provides information to the federal government is a "confidential source." Based on the legislative history of this clause, several courts have concluded that the term is not limited to natural persons.¹⁸⁰ Information provided by local law enforcement agencies can be withheld provided the information is confidential.

Two remaining clauses permit withholding investigatory records compiled for law en-

forcement purposes if release would "disclose investigative techniques and procedures"¹⁸¹ or "endanger the life or physical safety of law enforcement personnel."¹⁸² Few cases have construed these provisions.

(8) Exemptions 8 and 9.

These two exemptions permit withholding of information pertaining to financial institutions and wells. The exemptions have little application to military activities.

A Matter of Record

Notes from Government Appellate Division, USALSA

1. Protecting the Record

a. Article 45, Uniform Code of Military Justice, provides that a plea of not guilty will be entered if an accused, after a plea of guilty, sets up a matter inconsistent with the plea. During extenuation and mitigation an accused may seek to minimize his culpability. Trial counsel should be alert for statements which might be inconsistent with the guilty pleas. If a possible inconsistency is noted, trial counsel should request that the military judge inquire into the matter.

b. Trial counsel should not rely upon the military judge to insure that all trial proceedings are letter perfect. Sometimes a military judge inadvertantly overlooks or omits "boilerplate" requirements. Trial counsel should insure, for example, that counsel advisement is adequate, that providence inquiries are complete, that instructions are proper, and that findings are announced in the approved form.

c. In a recent case an accused was found not guilty of rape because the military judge found that the accused lacked the specific intent to commit rape. Rape is not a specific in-

tent crime. See *United States v. Woolery*, 5 M.J. 31, 33 (CMA 1978); paragraph 199, Manual for Courts-Martial, United States, 1969 (Revised edition). Furthermore, the defense of mistake of fact (as to consent) requires that the mistaken belief be both honest and reasonable.

2. Argument

An accused's responses during the guilty plea inquiry are not evidence. Thus, it is improper for a trial counsel to base an argument upon matters related to the military judge during the plea inquiry. *United States v. Brooks*, 43 CMR 817 (ACMR), *pet. denied*, 21 USCMA 595, 43 CMR 413 (1971).

3. Compleing the Record

Trial counsel are reminded that gestures, physical dimensions, and nonverbal actions do not become part of the written record unless appropriately described. In a recent case, the height of an accused was critical yet the record was silent on this evidence. Since the Court of Military Review has independent fact finding powers, appropriate descriptions in a record can be of critical importance in arguing to affirm convictions on appeal.

¹⁸⁰ *Keeney v. FBI*, 630 F.2d 114 (2d Cir. 1980); *Church of Scientology v. United States Dep't of Justice*, 612 F.2d 417 (9th Cir. 1980). *But see Founding Church of Scientology v. Miller*, 490 F. Supp. 144 (D.D.C. 1980).

¹⁸¹ 5 U.S.C. § 552(b)(7)(E) (1976).

¹⁸² 5 U.S.C. § 552(b)(7)(F) (1976).

Administrative and Civil Law Section

Administrative and Civil Law Division, TJAGSA

The Judge Advocate General's Opinion

1. (Separation From The Service—Convening Authority) A convening authority may recommend discharge UP paragraph 1-25e, AR-635-200, even if servicemember is no longer assigned to the convening authority's command. DAJA-AL 1980/3095 (2 December 1980).

A NCO in an overseas command was alleged to have committed two acts of attempted rape. Only one of the alleged victims appeared at the investigation UP Article 32, UCMJ, and the subsequent board of officers convened UP Chapter 14, AR 635-200. The investigation UP Article 32, UCMJ, found neither sufficient justification nor evidence to bring the NCO to trial. The board of officers recommended retention of the NCO. Through an administrative error the flagging action on the NCO's records was lifted and he was reassigned to CONUS.

Notwithstanding this reassignment, the convening authority for the board forwarded the proceedings to HQDA, IAW paragraph 1-25e, AR 635-200, recommending that the NCO be considered for discharge. The bases for this recommendation were that the allegations against the NCO represented serious violations of the mores of society, that his conduct was unbecoming a senior NCO, that his lack of insight into the consequences of his

behavior should not be condoned, and that, notwithstanding the board's finding of a lack of a pattern of misconduct, the incidents indicated that the NCO had extremely low moral standards and is a discredit to the entire NCO Corps. The NCO was informed of this action and submitted a rebuttal.

MILPERCEN requested a legal opinion as to whether a convening authority may recommend, UP paragraph 1-25e, AR 635-200, the separation of an individual when the individual is no longer assigned to his command.

TJAG opined that inasmuch as the discharge considered in this case is an exercise of the plenary power of the Secretary of the Army (10 U.S.C. 1169), for the convenience of the Government, and the standard applied is whether discharge is in the best interest of the Army, the fact that the individual is no longer under the command of the convening authority who convened the board of officers is not a bar to consideration of the case by the Secretary. Paragraph 1-25e speaks in terms of the "convening authority" rather than "commander having jurisdiction over the person." The only precondition UP paragraph 1-25e is that the individual be advised of the convening authority's intent to recommend discharge and that he be permitted to present written matters in rebuttal thereto.

Legal Assistance Items

*Major Joel R. Alvarey, Major Walter B. Huffman, Major John F. Joyce,
Captain Timothy J. Grendell, and Captain Harlan M. Heffelfinger
Administrative and Civil Law Division, TJAGSA*

1. Wills—Provision for Survivor's Benefits

The survivors of former or retired military personnel sometimes do not receive the survivor benefits to which they are entitled by virtue of the decedent's military service.

These system failures most often occur because of a lack of knowledge concerning potential entitlements on the part of survivors and personal representatives. Because military survivor benefits are either difficult or impossible to recover after the fact, e.g., the

VA burial allowance and headstone, some method of alerting survivors and personal representatives to potential benefits is advisable.

LTC Bryan Hawley, U.S. Air Force Chief of Legal Assistance, has provided a will provision which many Air Force judge advocates are using to alert personal representatives to the possible existence of military survivor benefits. The following modification of the Air Force provision is provided for the consideration of Army Legal Assistance Officers:

I have served in the Armed Forces of the United States. Therefore, I direct my executor or executrix to consult the legal assistance officer at the nearest military installation to ascertain if there are any benefits to which my dependents are entitled by virtue of my military affiliation at the time of my death. Regardless of my military status at the time of my death, I direct my executor or executrix to consult with the nearest Veterans Administration and Social Security Administration office to ascertain if there are any benefits to which my dependents may be entitled.

2. Change in Postal Services Policy

Proof of notice/delivery will soon be available in appropriate cases at no expense to the client! The Military Postal Service Agency has approved certified mail and return receipt requested services for legal assistance offices world-wide in all situations where such services are "necessary for the protection of a client's legal interests." This exception to normal postal services policy will be reflected in an interim change to AR 340-3 which should reach the field within 90 days. Legal Assistance officers needing to utilize the service prior to postal service distribution of the change to the regulation should request the local postal officer seek confirmation of the change to policy from the Military Postal Services Agency in Washington.

3. Legal Assistance Resource Material

The Superintendent of Documents maintains an inventory of Government consumer publications which can be purchased at minimal cost. These booklets present information on consumer credit laws and family finances in a simple and understandable manner. Legal assistance attorneys can use these booklets as quick reference guides or as educational material for clients to read while waiting for assistance. These publications can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Credit Shopping Guide

Description: Booklet explains finance charges and the consumer's rights under the Truth in Lending Act. (36 pages)

Cost: \$1.00

Give Yourself Credit (Guide to Consumer Credit Laws)

Description: Book provides a quick reference to the credit laws dealing with loans, car leasing, billing errors, credit cards, and investigative credit reports.

Cost: \$2.10

Helping Families Manage Their Finances

Description: Book provides information for assisting families with the management of their money. (52 pages)

Cost: \$1.00

A Guide to Budgeting for the Family

Description: Booklet outlines simple steps to be followed in planning and implementing a family budget. (14 pages)

Cost: \$1.25

NOTE: A discount of 25% is allowed for purchases of 100 or more copies of a single publication.

Non-Judicial Punishment

Quarterly Punishment Rates Per 1000 Average Strength January-March 1981

	<i>Quarterly Rates</i>
ARMY-WIDE	50.52
CONUS Army commands	54.55
OVERSEAS Army commands	43.60
USAREUR and Seventh Army commands	42.82
Eight US Army	56.26
US Army Japan	20.16
Units in Hawaii	41.48
Units in Alaska	21.17
Units in Panama	59.15

Courts-Martial

Quarterly Court-Martial Rates Per 1000 Average Strength January-March 1981

	<i>GENERAL CM</i>	<i>SPECIAL CM</i>		<i>SUMMARY CM</i>
		<i>BCD</i>	<i>NON-BCD</i>	
ARMY-WIDE	.43	.57	1.05	1.43
CONUS Army commands	.29	.46	1.02	1.63
OVERSEAS Army commands	.68	.76	1.08	1.09
USAREUR and Seventh Army commands	.79	.84	1.02	.84
Eighth US Army	.27	.50	1.27	1.17
US Army Japan	—	—	—	.41
Units in Hawaii	.06	.81	1.68	2.38
Units in Alaska	.77	.13	.89	2.04
Units in Panama	.61	—	1.37	5.02

NOTE: Above figures represent geographical areas under the jurisdiction of the commands and are based on average number of personnel on duty within those areas.

FROM THE DESK OF THE SERGEANT MAJOR

by Sergeant Major John Nolan



1. **Why Train?** I recently had the opportunity to observe and review a number of legal clerk and court reporter training programs. I am very encouraged to see that emphasis is being placed on training. I am a firm believer that training improves the performance of our legal clerks and court reporters.

Simply stated, training is preparation for job/duty performance. However, this concise statement of the purpose of training includes a number of complex considerations. First, the task requiring training must be identified. Whether the task can be trained, and how the soldier is trained for it, are deter-

mined by the characteristics of the task. Second, training must be relevant to the day-to-day reality of the requirements of the job. The effectiveness of the training will largely depend on how relevant the task and the training are to the actual requirements of the job. Finally, present training must be realistic for the likely requirements of the job in the future. Present training must prepare the person for future training as the requirements of the job change.

2. SQT Training. I have been asked by many of our legal clerks why SQT training is not year-round, rather than a crash program four to five weeks prior to the test. In fact, training *should* be a continual process, and supervisors should help their personnel prepare to meet or exceed the task standards contained in the Soldier's Manual and highlighted in the SQT. To do this, supervisors must know abilities and deficiencies of their personnel and insure that job deficiencies are overcome consistent with an individual's ability to perform. Here are some practical considerations for first-line supervisors to keep in mind when training legal clerks—whether to improve job performance or to do well on the SQT:

a. Consider across-the-job training. Rotate legal clerks to expose them to more than one concentrated area of our MOS.

b. Consider using other specialty experts to assist in the training process.

c. Begin a training program before the SQT period begins. Make generous use of the Soldier's Manual and the Trainer's Guide to find out what additional study references are available to enhance your training program.

d. Maintain Job Books for your legal clerks to keep track of their progress.

e. Make sure the SQT Notice is in the hands of legal clerks 60 days before testing commences. Use the SQT Notice as the primary means of training, but supplement the Notice through the use of realistic training devised at the local level.

f. Remember, the supervisor's responsibility is not only to administer and score the Job Site Component, but also to prepare supervised personnel for testing.

g. Insure that legal clerks take all the test components. Personnel taking a lesser number of task tests than other legal clerks taking the same SQT are penalized.

h. Do not allow anyone to be exempted from testing without unimpeachable justification.

No one likes to be tested. There is little doubt that significant time and energy are required to adequately prepare for SQT. However, the end result more than justifies the preparation. Given proper attention by both legal clerks and supervisors, SQT can also assist in developing our legal clerks so that they are better trained to meet the increasingly sophisticated demands of today's legal support requirements.

3. SQT Exemption Policy. Soldiers being used in accordance with the procedures and priorities established in para 3-5a, AR 600-200, are not exempt from SQT. Soldiers are exempt from SQT only while performing duties outside the PMOS for a period in excess of 90 days, as authorized in para 3-5b(3) or 3-5b(7), AR 600-200. Soldiers utilized in duties outside the PMOS, as provided in para 3-5b(3), are considered to be performing "special duty." Special duty is defined in para 1-2b as "performance of duty in a job or task with no relation to PMOS in a unit other than that to which assigned." The approval authority to utilize soldiers in special duty status in excess of 90 days is the MACOM. Therefore, only those soldiers performing special duty in excess of 90 days, as approved by the MACOM, would be exempt from SQT. Soldiers assigned duties by HQDA, as provided in para 3-3b(7), which are outside of the procedures and priorities established in para 3-5a, are exempt from SQT while in that status. Soldiers are eligible for SQT 90 days after termination of exempt status.

4. Keep Your Records Up To Date. If you recently completed a course of instruction,

you have a responsibility to record your accomplishment in your military records, subject to the provisions of AR 640-10 (Individual Military Personnel Records). For example, the original copy of the academic report should be forwarded, thru the local MILPO, to the Enlisted Records and Evaluation Center at Fort Benjamin Harrison, Indiana, for entry into your Official Military Personnel File (OMPF). Your accomplishment should also be recorded on your Personnel Qualification Record. This is important because personnel managers look at the training and schooling acquired by the soldier when making management decisions or deciding competitive actions. Keep your records accurate and up-to-date. Your career may depend on it.

5. Promotions. In *Down Range*, a publication sent to Army command sergeants major, Sergeant Major of the Army William A. Connelly says that he is disturbed by the lack of understanding middle-grade NCOs have expressed about the workings of the Army promotion system. SMA Connelly said that this lack of understanding means that soldiers are not receiving the guidance, care, and leadership they deserve. He called on the Army's senior NCOs to insure that the enlisted leadership understands the promotion system fully. I encourage any of our NCOs who are deficient in this area to study the applicable regulations and pamphlets on the subject.

6. Promotion Reconsideration. Following the adjournment of each centralized promotion selection board, Department of the Army agencies are flooded with applications from NCOs requesting promotion reconsideration. The majority of these applications circumvent the chain of command and are sent to the wrong agency. Current guidance requires that these applications be forwarded through the battalion or comparable commander and the soldier's MILPO to the Enlisted Promotion Section, MILPERCEN. This guidance is contained at para 7-43, AR 600-200. Requests from legal clerks and court reporters concerning their relative competitive posture

should be sent to: Commander, MILPERCEN, ATTN: DAPC-EP-A, 200 Stovall Street, Alexandria, VA 22332.

7. "Work With What You Have": In a recent interview published in *Army Times*, Sergeant Major of the Army William A. Connelly discussed the subject, "Work With What You Have." His comments, which should be of interest to all of us, are summarized here for your information. SMA Connelly stated that NCOs should stop complaining about what they don't have and put more emphasis on improving the professionalism and discipline of soldiers under their charge. He said that the Army has made great strides in improving the pay and benefits of soldiers and that, while much still needs to be done, NCOs can't sit around waiting for these improvements. "You can only work with what you have," he said, adding that it was up to others to recruit people for the Army, buy new equipment, improve facilities, and take the other actions necessary to enhance the Army's ability to fight a war. NCOs should put more emphasis in the future on improving soldier professionalism, military bearing, esprit de corps, and competence. "We need to curb the constant criticism and get on with making the Army as great an institution as we can. Criticism can be accepted in good faith if it is constructive. But criticism that is not constructive destroys the image and moral fiber of the Army," he said. Instead of complaining, SMA Connelly suggested that NCOs spend more of their time attacking "incompetence, laziness, and lack of discipline in their units" and do more to stress "selflessness and personal responsibility in young soldiers. The Army belongs to each one of us; the way we daily work at our individual military occupational skills, how we appear in our uniform, and the pride with which we carry ourselves are all part of being a soldier." He went on to say that NCOs should challenge any criticism of the Army from soldiers under their charge. "Ask them for a constructive remedy," he advised. He concluded by saying that NCOs should also take more of an interest in the appearance of soldiers and how they perform their jobs. "If

you see a lack of professional pride reflected in the appearance of the soldier next to you, politely but firmly let him know that such appearance reflects negatively on our Army. If a soldier does not conscientiously work at his MOS, on a daily basis, then his negative attitude must be addressed. All of the supplies in the world cannot replace dedicated, loyal, proud soldiers."

I heartily endorse these comments and suggest that, as applied to us, we quit our whimpering and sniveling about our place in the Corps, staffing at less than 100% of authorized strength, the quality or inexperience of junior legal clerks and court reporters, lack of TDY training opportunities, and perceived deficiencies in our personnel management. Instead, we should work toward improving those areas over which we do have control, such as training our junior members and taking correspondence courses if TDY training is not possible. By redirecting our energies in the positive manner discussed by SMA Connelly, we could achieve significant benefits with only minor effort. For example, many of the recurring questions and complaints which both SFC Meehan and I receive daily could be, and should have been, answered or resolved locally. That they are not, says something about the ignorance of the problem, uncaring disinterest, or lack of adequate knowledge or initiative on the part of supervisors. These attitudes hurt our retention posture, which in turn, causes many of the problems about which gripes are constantly being voiced. So, let's work together to build upon past accomplishments and what we do have, and, by so doing, lay the foundation for yet further improvements and enhanced professionalism as both soldiers and legal support personnel.

8. Peacetime Decorations. In the very near future, an Interim Change to AR 672-5-1 (Military Awards) will be distributed to the field. That change will contain policies and procedures for the following:

a. Authorization for all State Adjustments General, regardless of service, to approve Meritorious Service and Army Commendation Medals for Army National Guard members of that State.

b. Creation of the Army Achievement Medal, to recognize important achievements not considered as qualifying for the ARCOM but deserving of special recognition.

c. Creation of the Army Service Ribbon. Both officers and enlisted soldiers will be awarded the Army Service Ribbon on completion of the initial MOS or Basic Course.

d. Creation of an Oversea Service Ribbon, which will be awarded upon completion of a normal overseas tour in a peacetime environment.

e. Creation of an NCO Academy Ribbon, to be awarded to enlisted soldiers upon completion of each level of the noncommissioned officer education system. Subsequent awards will be reflected by oak leaf clusters.

f. Authorization to wear one foreign badge or patch.

The new medal and ribbons will be authorized for award to all qualified Active Army, Army National Guard, and Army Reserve soldiers. The new ribbons are expected to be available in post exchanges in 10-12 months, and in the Army supply system approximately 22 months from now.

Reserve Affairs Items

Reserve Affairs Department, TJAGSA

Mobilization Vacancies

There are a large number of mobilization designee positions now vacant. Judge advocates

who desire to apply for one or more of the many vacant MOB DES positions are encouraged to review the list of vacant positions

printed below. Such officers should complete the Application for Mobilization Designation (DA Form 2976) and forward it to The Judge Advocate General's School, ATTN: JAGS-RA (Colonel Carew), Charlottesville, Virginia

22901. Interested officers are reminded that mobilization designees are normally guaranteed a minimum of two weeks training with their mobilization agency. Current positions available are as follows:

GRD	PARA	LINE	SEQ	POSITION	AGENCY	CITY
LTC	36C	04	01	Legal Off	Ofc DCS Opns Plans	Washington, DC
CPT	02C	01A	01	Judge Advocate	Wm Beaumont AMC	El Paso, TX
MAJ	04	01A	02	Judge Advocate	Letterman AMC	Presidio SF, CA
CPT	04	02A	02	Asst JA	Walter Reed ARC	Washington, DC
CPT	02	01A	01	Judge Advocate	USA Garrison	Ft Detrick, MD
MAJ	06	03A	03	Asst SJA	USA Health Svcs Cmd	Ft S Houston, TX
MAJ	03	04A	01	Legal Officer	Ofc Gen Counsel	Washington, DC
LTC	05	05	07	Military Judge	USA Legal Svcs Agency	Falls Church, VA
MAJ	05	07	10	Military Judge	USA Legal Svcs Agency	Falls Church, VA
MAJ	07	05	02	App Attorney	USA Legal Svcs Agency	Falls Church, VA
MAJ	07	05	03	App Attorney	USA Legal Svcs Agency	Falls Church, VA
CPT	07	08	02	App Attorney	USA Legal Svcs Agency	Falls Church, VA
MAJ	08	08	02	App Attorney	USA Legal Svcs Agency	Falls Church, VA
MAJ	09	06	02	Trial Attorney	USA Legal Svcs Agency	Falls Church, VA
MAJ	09	06	03	Trial Attorney	USA Legal Svcs Agency	Falls Church, VA
MAJ	12	10	01	Judge Advocate	USA Legal Svcs Agency	Falls Church, VA
MAJ	12	10	02	Judge Advocate	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	10	01	Sp Project Off	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	12	01	Sr Def Counsel	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	12	02	Sr Def Counsel	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	12	03	Sr Def Counsel	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	12	04	Sr Def Counsel	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	12	05	Sr Def Counsel	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	03	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	04	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	05	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	06	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	07	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	08	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	09	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	10	Trial DC	USA Legal Svcs Agency	Falls Church, VA
LTC	05A	02	01	Deputy Chief	USA Clms Service	Ft Meade, MD
MAJ	05A	04	02	Clms JA	USA Clms Service	Ft Meade, MD
LTC	05	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
LTC	05	02A	01	Plans Officer	Ofc Judge Advocate General	Washington, DC
MAJ	05	03A	03	Staff Officer	Ofc Judge Advocate General	Washington, DC
LTC	09	01A	01	Dep Ch DA Adv	Ofc Judge Advocate General	Washington, DC
CPT	10A	02A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC

<i>GRD</i>	<i>PARA</i>	<i>LINE</i>	<i>SEQ</i>	<i>POSITION</i>	<i>AGENCY</i>	<i>CITY</i>
CPT	10A	02A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
LTC	10B	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
LTC	10C	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
MAJ	10C	02A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
MAJ	10C	02B	02	Judge Advocate	Ofc Judge Advocate General	Washington, DC
MAJ	10C	02B	03	Judge Advocate	Ofc Judge Advocate General	Washington, DC
CPT	10C	03A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
CPT	10C	03A	02	Judge Advocate	Ofc Judge Advocate General	Washington, DC
MAJ	10D	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
CPT	10E	02A	02	Judge Advocate	Ofc Judge Advocate General	Washington, DC
LTC	10F	01	01	Chief	Ofc Judge Advocate General	Washington, DC
MAJ	10F	02	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
LTC	10G	01	01	Chief	Ofc Judge Advocate General	Washington, DC
LTC	12A	01A	02	Judge Advocate	Ofc Judge Advocate General	Washington, DC
MAJ	12A	02A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
LTC	13	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
MAJ	13B	02A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
LTC	13C	01A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
LTC	14B	01	01	Chief	Ofc Judge Advocate General	Washington, DC
LTC	14D	02	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
CPT	04	04	02	Asst SJA	MTMC Eastern Area	Bayonne, NJ
CPT	07E	02	01	Clms O Tfc B	Gulf Outport	New Orleans, LA
MAJ	20I	02	01	Leg Advisor	USA Missile Cmd	Redstone Ars, AL
CPT	20I	03	01	Leg Advisor	USA Missile Cmd	Redstone Ars, AL
CPT	20I	03	02	Leg Advisor	USA Missile Cmd	Redstone Ars, AL
CPT	20I	03	03	Leg Advisor	USA Missile Cmd	Redstone Ars, AL
CPT	05	02A	01	Leg Asst Off J	USA Watervliet Ars	Watervleit, NY
MAJ	75	01A	01	Judge Advocate	USA Dep Newcumberland	Newcumberland, PA

GRD	PARA	LINE	SEQ	POSITION	AGENCY	CITY
CPT	75	01A	01	Leg/Clms Off	USA Dep Sharpe	Lathrop, CA
CPT	75	02	01	Atty Advisor	USA Dep Tobyhanna	Tobyhanna, PA
CPT	75	02	02	Atty Advisor	USA Dep Tobyhanna	Tobyhanna, PA
MAJ	75	01A	01	Post JA	USA Depot Tooele	Tooele, UT
MAJ	75	02	01	Cmd JA	USA Depot	Corpus Christi, TX
MAJ	07	02	01	Judge Advocate	USARSCH Technology Sch	Moffet Field, CA
MAJ	26D	01A	01	Legal Advisor	USA TSARCOM	St. Louis, MO
CPT	04H	04B	01	Asst SJA	USA CERCOM	Ft. Monmouth, NJ
CPT	04H	04B	02	Asst SJA	USA CERCOM	Ft. Monmouth, NJ
CPT	04H	04B	03	Asst SJA	USA CERCOM	Ft. Monmouth, NJ
CPT	04H	04B	04	Asst SJA	USA CERCOM	Ft. Monmouth, NJ
CPT	04H	04B	05	Asst SJA	USA CERCOM	Ft. Monmouth, NJ
CPT	04H	04B	06	Asst SJA	USA CERCOM	Ft. Monmouth, NJ
CPT	04H	04B	07	Asst SJA	USA CERCOM	Ft. Monmouth, NJ
CPT	04H	04B	08	Asst SJA	USA CERCOM	Ft. Monmouth, NJ
LTC	02	01A	01	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
MAJ	02	01B	01	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
MAJ	02	01B	02	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
MAJ	02	01B	03	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
MAJ	02	01B	04	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
MAJ	02	01B	05	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
LTC	46B	02	01	Legal Off	USA Corps of Engrs	Washington, DC
MAJ	48C	03	01	Legal Off	USA Corps of Engrs	Washington, DC
CPT	57	03	02	Asst SJA	172d Inf Bde	Ft. Richardson, AK
LTC	05A	01	01	Ch Mil Affairs	USA Garrison	Ft. Bragg, NC
MAJ	05B	02	01	Defense Counsel	USA Garrison	Ft. Bragg, NC
MAJ	05B	03	01	Trial Counsel	USA Garrison	Ft. Bragg, NC
CPT	05B	07	01	Defense Counsel	USA Garrison	Ft. Bragg, NC
CPT	03A	02	04	Trial Counsel	101st ABN Division	Ft. Campbell, KY
CPT	03A	02	04	Trial Counsel	101st ABN Division	Ft. Campbell, KY
CPT	03B	02	01	Defense Counsel	101st ABN Division	Ft. Campbell, KY
CPT	03B	02	04	Defense Counsel	101st ABN Division	Ft. Campbell, KY
MAJ	03D	02	02	Asst Judge Advocate	USA Garrison	Ft. Hood, TX
MAJ	03F	01	01	Claims Off	USA Garrison	Ft. Hood, TX
CPT	03F	03	01	Asst Claims Off	USA Garrison	Ft. Hood, TX
CPT	03B	03	01	Def Counsel	5th Inf Div	Ft. Polk, LA
CPT	03B	03	02	Def Counsel	5th Inf Div	Ft. Polk, LA
MAJ	03B	01	01	Chief	USA Garrison	Ft. Sheridan, IL
MAJ	02A	02	01	Ch Def Counsel	USA Garrison	Ft. Riley, KS
CPT	02B	04	01	Asst JA	USA Garrison	Ft. Riley, KS
CPT	03B	07	01	Trial Counsel	USA Garrison	Ft. Carson, CO
CPT	03B	04	02	Judge Advocate	USA Garrison	Ft. Drum, NY
CPT	03B	03	02	Judge Advocate	USA Garrison	Anncville, PA
CPT	03B	03	03	Judge Advocate	USA Garrison	Anncville, PA
CPT	03B	03	02	Judge Advocate	USA Garrison	Sparta, WI
CPT	03B	03	04	Judge Advocate	USA Garrison	Sparta, WI
MAJ	03D	01	01	Ch Admin Law Br	USA Garrison	Ft. Lewis, WA

GRD	PARA	LINE	SEQ	POSITION	AGENCY	CITY
CPT	03D	02	01	Judge Advocate	USA Garrison	Ft. Buchanan, PR
CPT	03B	01B	01	Asst JA-Instr	USA Trans Cen	Ft. Eustis, VA
CPT	31I	04	01	Instr	USA EN Center	Ft. Belvoir, VA
CPT	31I	04	02	Instr	USA EN Center	Ft. Belvoir, VA
CPT	31I	04	03	Instr	USA EN Center	Ft. Belvoir, VA
CPT	31I	04	04	Instr	USA EN Center	Ft. Belvoir, VA
CPT	31I	04	05	Instr	USA EN Center	Ft. Belvoir, VA
MAJ	05	03B	01	Asst SJA	QMC Ft Lee	Ft. Lee, VA
MAJ	04A	02A	01	Sr Def Counsel	USA Inf Cen	Ft. Benning, GA
CPT	04A	04A	01	Trial Counsel	USA Inf Cen	Ft. Benning, GA
CPT	04B	03	01	Admin Law Off	USA Inf Cen	Ft. Benning, GA
CPT	04B	04	01	Admin Law Off	USA Inf Cen	Ft. Benning, GA
CPT	04B	07A	01	Claims Off	USA Inf Cen	Ft. Benning, GA
MAJ	14B	02	02	Asst SJA	USA Signal Cen	Ft. Gordon, GA
CPT	07A	03	02	Judge Advocate	AVN Center	Ft. Ruckner, AL
CPT	07A	04	01	Mil Judge	AVN Center	Ft. Ruckner, AL
MAJ	38B	01	01	Admin Law Off	USA Garrison	Ft. Chaffee, AR
MAJ	38B	02	01	Admin Law Off	USA Garrison	Ft. Chaffee, AR
MAJ	30C	01B	01	Trial Counsel	USA AD Cen	Ft. Bliss, TX
CPT	04	03A	01	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	02	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	03	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	04	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	05	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	06	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	07	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
MAJ	06	02	01	Dep SJA	USA Admin Center	Ft. B Harrison, IN
CPT	06	05	01	Asst JA	USA Admin Center	Ft. B Harrison, IN
CPT	10D	06	01	Instr	USA Intel Cen Sch	Ft. Huachuca, AZ
CPT	10D	06	03	Instr	USA Intel Cen Sch	Ft. Huachuca, AZ
MAJ	12	02	01	Asst JA	ARNG TSA Cp Atterbury	Edinburg, IN
MAJ	12	02	02	Asst JA	ARNG TSA Cp Atterbury	Edinburg, IN

The SJA office at CINCPAC, Camp Smith, Hawaii, has announced an 0-6 JAGC mobilization designee vacancy. Applicant must be resident of Hawaii and be an 04, 05 or 06. In-

terested applicants should submit DA Form 2976 directly to TJAGSA, Reserve Affairs Department, Colonel Carew.

JAG Corps History Update in Preparation

The Official JAG Corps history, published in 1975 as part of the Army's observation of the Bicentennial,¹ is being updated by an ar-

¹Department of the Army, *The Army Lawyer: A History of the Judge Advocate General's Corps, 1775-1975* (1975).

ticle now in preparation. Material for this article is being collected by the editor of the *Military Law Review*. The article is scheduled for publication in that periodical during 1982. It will tell the story of the Army JAG Corps, both active and reserve, from 1975 onward.

The subject-matter coverage of the article will be similar to that of the 1975 history.²

Readers of *The Army Lawyer* and the *Military Law Review* are encouraged to send historical material, comments, and suggestions for consideration for inclusion in the updating article. Material submitted should be of general and long-term interest to the military legal community. There are no requirements or limitations as to format, style, or length. Photographs, drawings, and other similar materials may be submitted. Appropriate credit for

material used will be given in footnotes. Every effort will be made to return unused material if requested, but safe return cannot be guaranteed.

Material for possible use in the history update should be sent to: Major Percival D. Park, Editor, Military Law Review, DD&L Department, Judge Advocate General's School, Charlottesville, VA 22901. Major Park can also be reached at (804) 293-7376 or FTS 938-1394.

JAGC Personnel Section

PP&TO, OTJAG

1. Reassignments

COLONEL	FROM	TO
MARDEN, Jack	Ft Dix, NJ	HQ AFSE, Italy
LIEUTENANT COLONEL		
DANCHECK, Leonard	WRAMC, WASH, DC	USALSA, WASH, DC
ENDICOTT, James	Ft Hood, TX	USALSA, WASH, DC
HANFT, John	USALSA, Europe	USALSA, WASH, DC
LYMBURNER, John	USALSA, WASH, DC	HQ USAR Japan
MAJOR		
BOONSTOPPEL, Robert	Ft Leonard Wood, MO	Stu Det, Ft Benjamin Harrison, IN
CHWALIBOG, Andrew	TDS, Ft Lewis, WA	USALSA, Ft Stewart, GA
ELLIOTT, Harold	S&F, TJAGSA, VA	Stu Det, Ft Benjamin Harrison, IN
FEIGHNY, Michael	USALSA, WASH, DC	Stu Det, Ft Benjamin Harrison, IN
GRAVELLE, James	OTJAG, WASH, DC	Stu Det, Ft Benjamin Harrison, IN
PANGBURN, Kenneth	Ft Polk, LA	USALSA, WASH, DC
SCHWENDER, Craig	USALSA, Ft Knox, KY	S&F, TJAGSA, VA
SHIELDS, Buren	OTJAG, WASH, DC	Stu Det, AFSC, VA
SISSON, George	TDS, Ft Hood, TX	Stu Det, Ft Benjamin Harrison, IN
YOUMANS, Robert	Ft Hood, TX	TDS, Ft Hood, TX
CAPTAIN		
AYER, Francis	TDS, Ft Benning, GA	TDS, Ft Gordon, GA
BUTLER, Robert	Stu Det, Oklahoma City, OK	Ft Carson, CO
CAMACHO, Mark	Ft Huachuca, AZ	TDS, Ft Huachuca, AZ
DAVIS, Karen	TDS, Ft Lewis, WA	Ft Lewis, WA
DECORT, Donald	PP&TO, WASH, DC	OTJAG, WASH, DC

²A subject-matter index and other finding aids for the 1975 history will be published together with the updating article.

<i>CAPTAIN</i>	<i>FROM</i>	<i>TO</i>
DUBIA, Donald	Stu Det, Sacramento, CA	Ft Leonard Wood, MO
DZCKEY, Gene	Stu Det, St Paul, MN	TDS, Ft Bragg, NC
GRECZMIEL, HORST	TDS, Ft Campbell, KY	Ft Belvoir, VA
HARVEY, Mark	Stu Det, WASH, DC	Ft Belvoir, VA
HORTON, Victor	Ft McPherson, GA	Ft Knox, KY
LEE, Verndal	Ft Lewis, WA	Korea
LLOYD, Robert	Stu Det, Richmond, VA	Ft Leavenworth, KS
McFETRIDGE, Robert A	Stu Det, Sacramento, CA	Ft Hood, TX
MURA, Steven	Ft Lewis, WA	TDS, Ft Lewis, WA
PENDER, Thomas	Korea	MTMC, Bayonne, NJ
SAUNDERS, Raymond	Stu Det, Denver, CO	Ft Ord, CA
TAYLOR, Gregory	Ft Monmouth, NJ	APG, MD
WALDROP, Michael	TDS, Ft Huachuca, AZ	Ft Huachuca, AZ
WILBANKS, James	Stu Det, Ft Benjamin Harrison, IN	Ft Hood, TX
ZEZULA, Duane	USALSA, Europe	TDS, Ft Riley, KS

2. Promotions**LIEUTENANT COLONEL**

COUPE, Dennis F.
DEVINE, Frank E.
MAGERS, Malcolm S.

MAJOR

BEESON, John R.
JOHNSON, Jon K.

CW3

FORD, Mitchell
HOWARD, Leon

3. Retirement

DONAHUE, Joseph, COL

CLE News**1. Resident Course Quotas**

Attendance at resident CLE courses conducted at The Judge Advocate General's School is restricted to those who have been allocated quotas. Quota allocations are obtained from local training offices which receive them from the MACOM's. Reservists obtain quotas through their unit or RCPAC if they are non-unit reservists. Army National Guard personnel request quotas through their

units. The Judge Advocate General's School deals directly with MACOM and other major agency training offices. Specific questions as to the operation of the quota system may be addressed to Mrs. Kathryn R. Head, Nonresident Instruction Branch, The Judge Advocate General's School, Army, Charlottesville, Virginia 22901 (Telephone: AUTOVON 274-7110, extension 293-6286; commercial phone: (804) 293-6286; FTS: 938-1304).

2. TJAGSA CLE Courses

August 10-14: 62nd Senior Officer Legal Orientation (5F-F1).

August 17-May 21, 1982: 30th Graduate Course (5-27-C22).

August 24-26: 5th Criminal Law New Developments (5F-F35).

September 8-11: 13th Fiscal Law Course (5F-F12).

September 21-25: 17th Law of War Workshop (5F-F42).

September 28-October 2: 63rd Senior Officer Legal Orientation (5F-F1).

October 5-7: 3rd Legal Aspects of Terrorism (5F-F43).

October 13-16: 1981 Worldwide JAGC Conference.

October 19-December 18: 97th Basic Course (5-27-C20).

October 26-29: 4th Claims (5F-F26).

November 2-6: 10th Defense Trial Advocacy (5F-F34).

November 16-20: 9th Legal Assistance (5F-F23).

November 30-December 11: 90th Contract Attorneys (5F-F10).

January 4-8: 18th Law of War Workshop (5F-F42).

January 4-15: 2nd Administrative Law for Military Installations (5F-F24).

January 11-15: 1982 Government Contract Law Symposium (5F-F11).

January 21-23: JAG USAR Workshop.

January 25-29: 64th Senior Officer Legal Orientation (5F-F1).

January 25-April 2: 98th Basic Course (5-27-C20).

February 8-12: 3rd Prosecution Trial Advocacy (5F-F32).

February 22-March 5: 91st Contract Attorneys (5F-F10).

March 8-12: 10th Legal Assistance (5F-F23).

March 22-26: 21st Federal Labor Relations (5F-F22).

March 29-April 9: 92nd Contract Attorneys (5F-F10).

April 5-9: 65th Senior Officer Legal Orientation (5F-F1).

April 20-23: 14th Fiscal Law (5F-F12).

April 26-30: 12th Staff Judge Advocate (5F-F52).

May 3-14: 3d Administrative Law for Military Installations (5F-F24).

May 12-14: 4th Contract Attorneys Workshop (5F-F15).

May 17-20: 10th Methods of Instruction.

May 17-June 4: 24th Military Judge (5F-F33).

May 24-28: 19th Law of War Workshop (5F-F42).

June 7-11: 67th Senior Officer Legal Orientation (5F-F1).

June 21-July 2: JAGSO Team Training.

June 21-July 2: BOAC (Phase VI-Contract Law).

July 12-16: 4th Military Lawyer's Assistant (512-71D/20/30).

July 19-August 6: 25th Military Judge (5F-F33).

July 26-October 1: 99th Basic Course (5-27-C20).

August 2-6: 11th Law Office Management (7A-713A).

August 9-20: 93rd Contract Attorneys (5F-F10).

August 16-May 20, 1983: 31st Graduate Course (5-27-C22).

August 23-25: 6th Criminal Law New Developments (5F-F35).

September 13-17: 20th Law of War Workshop (5F-F42).

September 20-24: 68th Senior Officer Legal Orientation (5F-F1).

October 12-15: 1982 Worldwide JAGC Conference.

October 18-December 17: 100th Basic Course (5-27-C20).

3. Mandatory Continuing Legal Education

Several states now provide for mandatory continuing legal education. Staying abreast of the requirements of state bars is the responsibility of the individual judge advocate. Any questions a judge advocate may have concerning his or her state's CLE requirements must be addressed directly to the state bar association. It should be noted that all of the states which have CLE requirements recognize courses taught by TJAGSA, Charlottesville, VA.

4. Civilian Sponsored CLE Courses

October

1-3: ALIABA, Pension, Profit-Sharing and Deferred Comp. Plans Washington, DC.

2: OLCI, Appellate Practice, Columbus, OH.

2-3: GICLE, Corporate Law, Savannah, GA.

2-3: LSU, Environmental Law, Baton Rouge, LA.

4-9: NJC, Civil Litigation, Reno, NV.

5-9: AAJE, Law of Evidence, Alexandria, VA.

9-10: GICLE, Corporate Law, Atlanta, GA.

10: HICLE, Worker's Compensation, Honolulu, HI.

11-16: NJC, Criminal Evidence, Reno, NV.

15-16: PLI, Advanced Corp. Taxation (1981), Los Angeles, CA.

15-17: LSU, Estate Planning, Baton Rouge, LA.

16: GICLE, Advanced Fiduciary Law, Unicoi, GA.

16-18: NCCD, The Criminal Trial, Phoenix, AZ.

16-17: PLI, Proving & Defending Against Back & Neck Injuries, Chicago, IL.

19-11/13: SLF, Police Supervision, Dallas, TX.

19-20: PLI, Computer Contracts, New York City, NY.

19-20: PLI, Employment Law, New York City, NY.

19-20: PLI, Litigation & Antitrust Cases, New York City, NY.

21-23: SMU, Estate Planning, Dallas, TX.

21-23: PLI, Fundamental Concepts of Estate Administration, Seattle, WA.

22: NYSBA, Arbitration, Buffalo, NY.

22-23: PLI, Estate Planning Institute, New York City, NY.

22-23: ALIABA, Creative Tax Planning for Real Estate Transactions, Philadelphia, PA.

22-24: NYSBA, Trial Advocacy, New York City, NY.

23: HICLE, Real Estate Financing, Honolulu, HI.

23-24: GTULC, Defense of Criminal Cases, Washington, DC.

26-30: FPI, Government Construction Contracts, Washington, DC.

29-11/1: NCCD, Death Penalty, Tampa, FL.

29-31: GTULC, Litigation of Equal Employment Discrimination Actions, Washington, DC.

- 30: OLCI, Bankruptcy, Cleveland, OH.
- For further information on civilian courses, please contact the institution offering the course, as listed below:
- AAA: American Arbitration Association, 140 West 51st Street, New York, NY 10020.
- AAJE: American Academy of Judicial Education, Suite 437, 539 Woodward Building, 1426 H Street, NW, Washington, DC 20005. Phone: (202) 783-5151.
- ABA: Alabama Institute for Continuing Legal Education, Box CL, University, AL 36486.
- ALIABA: American Law Institute-American Bar Association Committee on Continuing Professional Education, 4025 Chestnut Street, Philadelphia, PA 19104.
- ARKCLE: Arkansas Institute for Continuing Legal Education, 400 West Markham, Little Rock, AR 72201.
- ATLA: The Association of Trial Lawyers of America, 1050 31st St., N.W. (or Box 3717), Washington, DC 20007
- BNA: The Bureau of National Affairs Inc., 1231 25th Street, N.W., Washington, DC 20037.
- CALM: Center for Advanced Legal Management, 1767 Morris Avenue, Union, NJ 07083.
- CCEB: Continuing Education of the Bar, University of California Extension, 2150 Shattuck Avenue, Berkeley, CA 94704.
- CCH: Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, IL 60646.
- CCLE: Continuing Legal Education in Colorado, Inc., University of Denver Law Center, 200 W. 14th Avenue, Denver, CO 80204.
- CLEW: Continuing Legal Education for Wisconsin, 905 University Avenue, Suite 309, Madison, WI 53706.
- DLS: Delaware Law School, Widener College, P.O. Box 7474, Concord Pike, Wilmington, DE 19803.
- FBA: Federal Bar Association, 1815 H Street, N.W., Washington, DC 20006. Phone: (202) 638-0252.
- FJC: The Federal Judicial Center, Dolly Madison House, 1520 H Street, N.W., Washington, DC 20003.
- FLB: The Florida Bar, Tallahassee, FL 32304.
- FPI: Federal Publications, Inc., Seminar Division Office, Suite 500, 1725 K Street NW, Washington, DC 20006. Phone: (202) 337-7000.
- GICLE: The Institute of Continuing Legal Education in Georgia, University of Georgia School of Law, Athens, GA 30602.
- GTULC: Georgetown University Law Center, Washington, DC 20001.
- HICLE: Hawaii Institute for Continuing Legal Education, University of Hawaii School of Law, 1400 Lower Campus Road, Honolulu, HI 96822.
- ICLEF: Indiana Continuing Legal Education Forum, Suite 202, 230 East Ohio Street, Indianapolis, IN 46204.
- ICM: Institute for Court Management, Suite 210, 1624 Market St., Denver, CO 80202. Phone: (303) 543-3063.
- IPT: Institute for Paralegal Training, 235 South 17th Street, Philadelphia, PA 19103.
- KCLE: University of Kentucky, College of Law, Office of Continuing Legal Education, Lexington, KY 40506.
- LSBA: Louisiana State Bar Association, 225 Baronne Street, Suite 210, New Orleans, LA 70112.
- LSU: Center of Continuing Professional Development, Louisiana State University Law Center, Room 275, Baton Rouge, LA 70803.
- MCLNEL: Massachusetts Continuing Legal Education—New England Law Institute,

- Inc., 133 Federal Street, Boston, MA 02108, and 1387 Main Street, Springfield, MA 01103.
- MOB:** The Missouri Bar Center, 326 Monroe, P.O. Box 119, Jefferson City, MO 65102.
- NCAJ:** National Center for Administration of Justice, Consortium of Universities of the Washington Metropolitan Area, 1776 Massachusetts Ave., NW, Washington, DC 20036. Phone: (202) 466-3920.
- NCATL:** North Carolina Academy of Trial Lawyers, Education Foundation Inc., P.O. Box 767, Raleigh, NC. 27602.
- NCCD:** National College for Criminal Defense, College of Law, University of Houston, 4800 Calhoun, Houston, TX 77004.
- NCDA:** National College of District Attorneys, College of Law, University of Houston, Houston, TX 77004. Phone: (713) 749-1571.
- NCJFCJ:** National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8978, Reno, NV 89507.
- NCLE:** Nebraska Continuing Legal Education, Inc., 1019 Sharpe Building, Lincoln, NB 68508.
- NCSC:** National Center for State Courts, 1660 Lincoln Street, Suite 200, Denver, CO 80203
- NDAA:** National District Attorneys Association, 666 North Lake Shore Drive, Suite 1432, Chicago, IL 60611.
- NITA:** National Institute for Trial Advocacy, William Mitchell College of Law, St. Paul, MN 55104
- NJC:** National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89507.
- NPI:** National Practice Institute Continuing Legal Education, 861 West Butler Square, 100 North 6th Street, Minneapolis, MN 55403. Phone: 1-800-328-4444 (In MN call (612) 338-1977).
- NPLTC:** National Public Law Training Center, 200 P Street, N.W., Suite 600, Washington, D.C. 20036.
- NWU:** Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611
- NYSBA:** New York State Bar Association, One Elk Street, Albany, NY 12207.
- NYSTLA:** New York State Trial Lawyers Association, Inc., 132 Nassau Street, New York, NY 12207.
- NYULT:** New York University, School of Continuing Education, Continuing Education in Law and Taxation, 11 West 42nd Street, New York, NY 10036.
- OLCI:** Ohio Legal Center Institute, 33 West 11th Avenue, Columbus, OH 43201.
- PATLA:** Pennsylvania Trial Lawyers Association, 1405 Locust Street, Philadelphia, PA 19102.
- PBI:** Pennsylvania Bar Institute, P.O. Box 1027, 104 South Street, Harrisburg, PA 17108.
- PLI:** Practising Law Institute, 810 Seventh Avenue, New York NY 10019. Phone: (212) 765-5700.
- SBM:** State Bar of Montana, 2030 Eleventh Avenue, P.O. Box 4669, Helena, MT 59601.
- SBT:** State Bar of Texas, Professional Development Program, P.O. Box 12487, Austin, TX 78711.
- SCB:** South Carolina Bar, Continuing Legal Education, P.O. Box 11039, Columbia, SC 29211.
- SLF:** The Southwestern Legal Foundation, P.O. Box 707, Richardson, TX 75080.
- SMU:** Continuing Legal Education, School of Law, Southern Methodist University, Dallas, TX 75275
- SNFRAN:** University of San Francisco, School of Law, Fulton at Parker Avenues, San Francisco, CA 94117.

UHCL: University of Houston, College of Law, Central Campus, Houston, TX 77004.

UMLC: University of Miami Law Center, P.O. Box 248087, Coral Gables, FL 33124.

UTCLE: Utah State Bar, Continuing Legal Education, 425 East First South, Salt Lake City, UT 84111.

VACLE: Joint Committee of Continuing Legal Education of the Virginia State Bar and The Virginia Bar Association, School of Law, University of Virginia, Charlottesville, VA 22901.

VUSL: Villanova University, School of Law, Villanova, PA 19085.

Current Materials of Interest

1. Articles

Protections Against Discrimination Afforded to Uniformed Military Personnel: Sources and Directions, by Ora Fred Harris, Jr. Published in Vol. 46, No. 2, *Missouri Law Review* (Spring 1981). Publisher's address: University of Missouri-Columbia, 603 Kuhlman Court, Columbia, Missouri 65211

The Use of Sociological Techniques in the Jury Selection Process, by Dr. Norma A. Winston and Dr. William E. Winston. Published in Vol. VI, No. 1, *The National Journal of Criminal Defense* (Spring 1980). Publisher's address: National College for Criminal Defense, College of Law, University of Houston, Houston, Texas 77004

2. Paralegal Training

The Institute for Paralegal Training announces its 1981 program for Continuing Professional Education.

Seminars and workshops are scheduled to be held in major cities throughout the country from May through November. The programs cover a wide variety of subjects and are designed to provide intensive sessions offering maximum amount of information to all persons in the law-related professions. Seminars include:

- Managing Complex Litigation
- Essentials of the Litigation process

3. Regulations.

NUMBER	TITLE	CHANGE	DATE
AR 27-10	Legal Services—Military Justice	902	1 May 81
AR 37-20	Administrative Control of Appropriated Fund	901	20 May 81

- Discovery and Trial Preparation
- Techniques of Fact Investigation and Interviewing
- Municipal Finance
- Secured Transactions
- Formation and Structure of Corporations
- Preparation of IRS Form 1041
- Post Mortem Estate Planning
- Preparation of IRS Forms 706 and 709
- Techniques of Estate Planning
- Real Estate Construction Loans
- Title Reports and Title Insurance
- How to Understand and Prepare Commercial Real Estate Documents
- ERISA Update
- Pension Planning
- Pension Plan Administration
- Introduction to Welfare Plans
- Welfare Plan Administration
- Equal Employment Opportunity Obligations
- Introduction to Labor Relations
- Personnel Administration
- Copyright and Trademark
- Effective Legal Drafting
- The Legal System and Legal Terminology
- Workshop for Paralegal Managers

For information and registration contact Kathryn Mann at The Institute, 235 South 17th Street, Philadelphia, PA. 19103; phone, 215-732-6999.

<i>NUMBER</i>	<i>TITLE</i>	<i>CHANGE</i>	<i>DATE</i>
AR 55-46	Travel of Dependents and Accompanied Military and Civilian Personnel to, from or Between Overseas Areas	902	25 May 81
AR 135-100	Appointment of Commissioned and Warrant Officers of the Army	903	11 May 81
AR 140-58	Enlisted Personnel Classification, Promotion, and Reduction	904	29 May 81
AR 210-7	Commercial Solicitation on Army Installations	901	30 Apr 81
AR 210-16	Bachelor Housing Management	904	29 May 81
AR 230-2	Personnel Policies and Procedures	902	1 Apr 81
AR 601-280	Army Reenlistment Program	913	30 Apr 81
AR 601-280	Personnel Procurement: Army Reenlistment Program	914	29 May 81
AR 612-10	Reassignment Processing and Army Sponsorship and Orientation Program	904	20 May 81
AR 630-5	Leave, Passes, Permissive Temporary Duty, and Public Holiday	901	15 May 81
AR 635-120	Officer Resignations and Discharges	902	25 May 81
AR 623-105	Officer Evaluation Reporting System	903	29 May 81
AR 635-200	Personnel Separations: Enlisted Personnel	906	29 May 81
AR 930-4	Army Emergency Relief	901	15 May 81

DA Pam 27-50-103

By Order of the Secretary of the Army:

Official:

ROBERT M. JOYCE
Brigadier General, United States Army
The Adjutant General

E. C. MEYER
General, United States Army
Chief of Staff

★ U.S. GOVERNMENT PRINTING OFFICE: 1981: 341-809/11